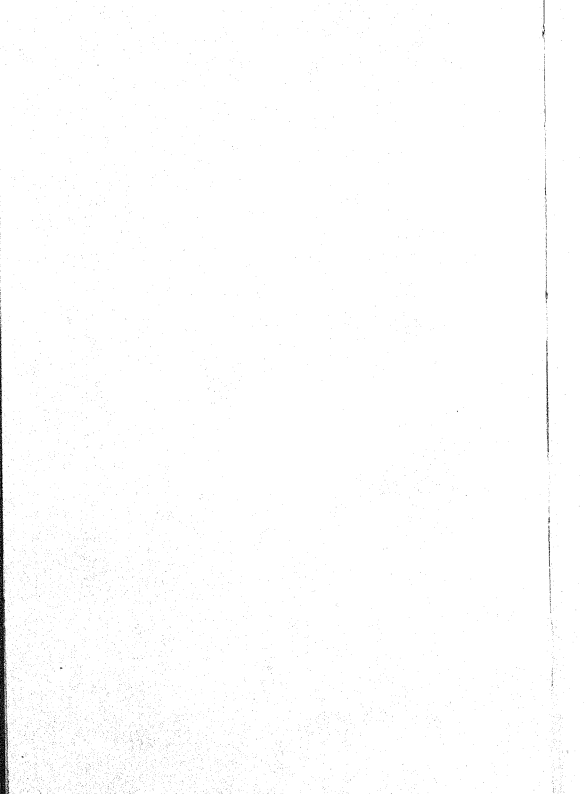


LOCAL
GOVERNMENT LAW
AND
ADMINISTRATION

VOLUME VII



LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

By

THE RIGHT HONOURABLE THE
LORD MACMILLAN

A LORD OF APPEAL IN ORDINARY

AND OTHER LAWYERS

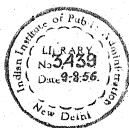
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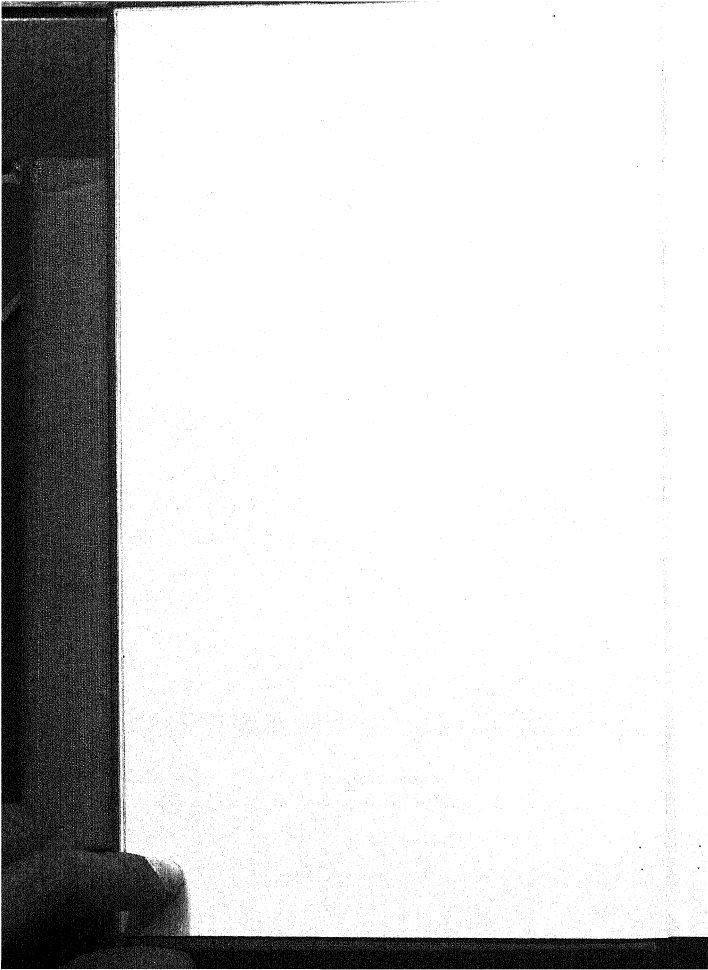
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Brothers	Bros.
Company	Co.
Corporation	Corp'n.
Home Office	H.O.
Justices	JJ.
Limited	Ltd.
London County Council	..	..	..	..	..	..	L.C.C.
Local Government Act	..	..	..	..	..	..	L.G.A.
Medical Officer of Health	..	..	..	..	..	..	M.O.H.
Ministry of Agriculture and Fisheries	..	..	..	..	..	..	M. of A.
Ministry of Health	..	..	..	..	..	..	M. of H.
Ministry of Transport	..	..	..	..	..	..	M. of T.
Public Health Acts	P.H.A.
Railway Company	Rail. Co.
Rating and Valuation Act	R. & V.A.
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THE ENGLISH AND EMPIRE DIGEST

In addition to the usual citation of the reports of cases in the footnotes, there will be found a reference to the volume, page, and case number at which the case appears in the Digest. Thus:

Davies v. Mann (1842), 10 M. & W. 546; 36 Digest 113, 751.

HALSBURY'S COMPLETE STATUTES OF ENGLAND

References to Public Acts of Parliament are followed by a reference to the volume and page at which the Act or section of the Act appears in Halsbury's Complete Statutes of England. Thus:

The Highway Act, 1835; 9 Statutes 54

HIRE PURCHASE

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See also titles : CONTRACTS ;
ELECTRICITY SUPPLY ;
GAS ;
MUNICIPAL UNDERTAKINGS ;

and generally, see Halsbury's Laws of England, 2nd ed., Vol. I., pp. 757—766.

Introduction.—Hire purchase agreements are made by local authorities in their capacity of gas or electricity undertakers, for such chattels as heaters, cookers, motors and fittings generally. This title deals, therefore, first with the supply of fittings as allowed by statute and then with the method of such supply by hire or hire purchase. The title MUNICIPAL UNDERTAKINGS should be consulted for the supply by direct sale. [1]

Supply of Fittings. Electricity.—While undertakers who are companies are governed as regards the sale of fittings by their Memorandum and Articles or local Acts, local authorities are given certain powers by general statutes, and these may be extended by local Acts. Before the passing of the Electricity (Supply) Act, 1926, they were not allowed to sell fittings (a), but only to hire them out, for by sect. 16 of the Electric Lighting Act, 1909 (b), it was enacted that all fittings and apparatus and appliances let by any undertakers on hire or belonging to the undertakers, either fixed to the premises or to the soil were to continue to be the property of the undertakers. Again, by sect. 23 of the Electricity (Supply) Act, 1919 (c), both joint electricity authorities and any local authority who were undertakers were authorised to provide and let for hire, but not to manufacture or sell, fittings, apparatus and appliances for lighting, heating and motive power unless expressly authorised to do so by their special Act. The meaning of the words "provide" was questioned, and in *A.-G. v. Liverpool Corporation* (d), it was again decided that they did not enable a local authority to sell fittings, so by sect. 48 of the Electricity (Supply) Act of 1926 (e), the matter was settled by giving power to the undertakers to sell electric fittings, apparatus and appliances for lighting, heating

(a) *A.-G. v. Ilford Urban Council* (1915), 84 L. J. Ch. 860 ; 20 Digest 199, 8 ; and *A.-G. v. Sheffield Corp'n.* (1912), 106 L. T. 367 ; 20 Digest 199, 10.

(b) 7 Statutes 750.

(c) *Ibid.*, 771.

(d) [1922] 1 Ch. 211 ; 20 Digest 199, 11.

(e) 7 Statutes 819.

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and motive power, and to instal, connect, repair, maintain and remove them, and to demand and take any rents and charges on such terms and conditions as might be agreed upon. This gave them power, therefore, to sell, hire or supply on the hire purchase system, but (by sub-sect. 2 (a) of the section) not to manufacture unless allowed to do so by a special Act, and only to sell to a consumer or a person who intended to be a consumer, or a contractor, described as "a person engaged in the business of selling and installing electric fittings," who required the fittings in order to supply a consumer or an intending consumer. The section also directed that the prices were to be no less than the usual retail or trade prices recognised by the trade, that the local authorities must adjust the charges to meet any expenditure incurred by them, including interest and sinking fund charges on any money borrowed, and that the items must be shown separately in their accounts. A committee has been set up by the Electricity Commissioners under sect. 48 (3) (f) to determine any question as regards the recognised or trade prices. [2]

Gas.—A local authority as a gas undertaker has no power to sell fittings, except under special provisions contained in a local Act, the power conferred by sect. 18 of the Gasworks Clauses Act, 1871 (g), being limited to letting for hire. No hire purchase agreement can therefore be entered into except where the undertakers are specially authorised to sell. In fact, however, the majority of local authorities having gas undertakings have acquired such powers under their own private Acts and the practice of selling fittings and appliances is now a very common one. Clause 26 of the Model Gas Bill sets out in terms a section suitable for inclusion in a private bill (h). [3]

Hire and Hire Purchase.—Both hire and hire purchase depend on some form of agreement and are made by local authorities in the same way as any other agreements. The title CONTRACT should therefore be studied in this connection. As in the case of other contracts, the agreement may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, and in each case the substance of the transaction must be looked at and not the words alone. Most local authorities have agreements which they can alter to suit various conditions and these are usually not under seal but in printed form and stamped with a sixpenny stamp. [4]

Hire.—Hire is a contract by which the hirer obtains a right to use the chattel hired in return for the payment of the price of the hiring to the owner, without any intention of it becoming his property. The owner of a chattel which he lets out for hire is under an obligation to see that it is reasonably fit and suitable for the purpose for which he lets it out (i), and he is therefore liable for any damage caused by its defects. Where the owner has agreed with the hirer to keep the chattel in proper repair, there is generally an implied right to resume possession for the execution of such repairs. As has been mentioned, local authorities who are undertakers, by sect. 48 of the Electricity (Supply) Act, 1926 (k), have power to agree such terms and conditions as they wish in regard to the repair of the fittings they hire out, and this must

(f) 7 Statutes 819.

(g) 8 Statutes 1267.

(h) Michael & Will on Gas, Vol. Gas (8th Edn.), p. 300.

(i) See *Sutton v. Temple* (1843), 12 M. & W. 52; 3 Digest 86, 203, and other cases on pp. 87, 88 of 3 Digest.

(k) *Ante*, p. 1.

therefore be considered in the contract of hiring. The same applies to gas undertakers under sect. 18 of the Gasworks Clauses Act, 1871 (*l*), and by sect. 38 of that Act a penalty is enforceable for any injury done to a hired out fitting by wilful or culpable negligence, or by fraud. The hirer must pay the rent agreed upon, and he is not discharged by returning the chattel to the owner before it is due (*m*). The hirer is under an obligation to take only reasonable care of the chattel and is not liable for loss or injury happening to it, unless caused by the negligence of himself or his servants (*n*). Apart from special contract, he is not responsible for fair wear and tear (*o*) and need only do such repairs, if he has contracted to repair, as are reasonably necessary (*p*). He must not use the chattel he has hired for any purpose except that for which it was hired (*q*). [5]

Hire Purchase.—In the case of hire purchase, goods are let upon such terms and conditions that the hirer is to become the owner as soon as the provisions of the agreement are carried out (*r*), but until all the instalments have been paid the property remains in the original owner (*s*). Hire purchase must be distinguished both from hire and from purchase carried out by payment by instalments, and it has been held (*a*) that in the absence of any option to the hirer to give back the goods at any time without the consent of the other party, the agreement is one of agreement to buy, the property passes upon delivery, and the transaction is within the Sale of Goods Act. The owner of property let out under a hire purchase agreement may assign the agreement to a third person, and the transferee, upon notice of the assignment being given to the hirer, is entitled to receive the instalments, but the right to enter and take possession is not capable of assignment (*b*). The hirer may assign his interest under a hire purchase agreement unless it is otherwise provided therein (*c*). He cannot, however, give a good title to the goods as against the owner, and the owner is entitled to recover damages as against an auctioneer (*d*), or a purchaser (*e*), or a pledgee (*f*), even though the chattel has been received in good faith and without notice. The owner, however, must not follow and seize the property (*g*), but must proceed by legal methods or he is liable to an action for trespass. Where the hirer sells the chattel to a *bona fide*

(*l*) *Ante*, p. 2.

(*m*) *National Cash Register Co. v. Stanley*, [1921] 3 K. B. 292, at p. 296; Digest (Supp.).

(*n*) *Sanderson v. Collins*, [1904] 1 K. B. 628; 3 Digest 91, 233.

(*o*) *Pomfret v. Ricroft* (1671), 1 Saund. 321; 3 Digest 70, 118.

(*p*) *Sutton v. Temple* (1848), 12 M. & W. 32, at p. 60; 3 Digest 86, 203.

(*q*) *Burnard v. Haggis* (1863), 14 C. B. (N. S.) 45; 3 Digest 56, 20.

(*r*) See cases in 3 Digest, pp. 92–94, and *A.-G. v. Pritchard* (1928), 97 L. J. (K. B.) 561; Digest (Supp.).

(*s*) *Helby v. Matthews*, [1895] A. C. 471; 3 Digest 93, 245; see *Re Davis & Co., Ex parte Rawlings* (1888), 22 Q. B. D. 193; 3 Digest 94, 243.

(*a*) *Lee v. Butler*, [1898] 2 Q. B. 318; 3 Digest 92, 241; *Thompson and Shackell, Ltd. v. Veale* (1890), 74 L. T. 130; 3 Digest 93, 243.

(*b*) See *Re Davis & Co., Ex parte Rawlings*, *supra*.

(*c*) *Whiteley, Ltd. v. Hill*, [1918] 2 K. B. 808; 3 Digest 97, 262.

(*d*) *Cochrane v. Rymill* (1879), 40 L. T. 744; 3 Digest 45, 320; but not if the auctioneer has not actually dealt with the goods and exercised dominion over them, but has acted only as a broker (*ibid.*).

(*e*) *Marner v. Banks* (1867), 16 W. R. 62; 3 Digest 110, 347.

(*f*) *Singer Manufacturing Co. v. Clark* (1870), 5 Ex. D. 37; 3 Digest 97, 265.

(*g*) *Miller v. Strohmenger* (1887), 4 T. L. R. 133; 3 Digest 98, 266.

purchaser without notice he may be prosecuted for larceny as a bailee (*h*).

If the chattel is a fixture, a mortgagee, who has no notice of a hire purchase agreement and has entered into possession, has a superior title to the owner (*i*), but not where it is not a fixture (*k*). A mortgagee who had not entered into possession was also held to be the lawful owner where the chattel was a fixture, and the mortgage contained a covenant by the mortgagor that he would not remove fixtures without the mortgagee's written consent (*l*). It is of importance, therefore, to consider the question of hire purchase in a form of mortgage and the question of mortgage in a hire purchase agreement. [6]

Forms of Agreement.—The importance of the form of hire purchase agreement is demonstrated by the above general law, and the many cases that have been before the courts have shown to those who draft such agreements the points that must be considered. Precedents generally are given in the *Encyclopædia of Forms* (*m*). As already stated, local authorities make hire purchase agreements in their capacity of gas or electricity undertakers for such chattels as heaters, cookers, motors and fittings generally, which may be fixtures or not. According to their varying powers they will sell them either in the normal manner or by hire purchase or simply send them out on hire. Hire purchase payments are usually spread over 1, 2 or 3 years and the charges are based upon the price of the apparatus plus a percentage to cover the interest charges. In the same category as hire purchase is the system of Assisted Wiring now adopted by many local authorities with electricity undertakings. [7]

London.—The law under public general statutes does not differ in London. The L.C.C. (General Powers) Act, 1906, Part V. (sects. 27—29) (*n*), authorises the metropolitan borough councils which are authorised electricity undertakers, to expend money upon wiring and fitting and the supply of wires, fittings and apparatus, and to make agreements and charges therefor, but not to manufacture fittings and apparatus. The borough council must adjust the charges so as to meet expenditure under these powers, including interest on, and instalment and sinking fund repayments of, money borrowed for the purpose. The charges for wiring, fittings, etc., must be shown separately on the demand note, and total sums received must be shown separately in the annual published accounts. Power is given to borrow for the purpose of the above-mentioned provisions. [8]

(*h*) *Payne v. Wilson*, [1895] 2 Q. B. 537; 3 Digest 97, 264.

(*i*) *Reynolds v. Ashby & Son*, [1904] A. C. 466; 35 Digest 309, 565.

(*k*) *Lyon & Co. v. London City and Midland Bank*, [1908] 2 K. B. 135; 35 Digest 309, 564.

(*l*) *Ellis v. Glover and Hobson, Ltd.*, [1908] 1 K. B. 388; 35 Digest 320, 644.

(*m*) 2nd ed., Vol. VII., Nos. 272—274, and Supp.

(*n*) 11 Statutes 1278.

HISTORIC BUILDINGS

See ANCIENT MONUMENTS AND BUILDINGS.

HOARDINGS

See ADVERTISEMENTS ; BILLPOSTING ; BUILDING BYE-LAWS.

HOLIDAY CAMPS

See EDUCATION SPECIAL SERVICES ; TENTS, VANS AND SHEDS.

HOME OFFICE

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*See also titles : CONSTITUTIONAL LAW AND LOCAL GOVERNMENT ;
METROPOLITAN POLICE ;
SECRETARY OF STATE.*

Introduction.—Besides those of their functions with respect to the administration of justice which affect local authorities, the H.O. supervise local authorities in the administration of the following matters :

Burial Grounds ; Bye-laws for regulation of advertisements and for good rule of a county or borough, and for regulating the use of the sea-shore and promenades ; Carbide of Calcium, storage of ; Celluloid, storage and use of ; Children and Young Persons ; Cinematograph Films and Exhibitions ; Clubs, registration of ; Coroners ; Cremation ; Electors, registration of ; Electoral Areas, alteration of and of polling districts ; Elections, Local and Parliamentary ; Explosives ; Factory and Workshop Acts ; Fairs ; Fire Brigades ; Intoxicating Liquors ; Petroleum ; Police ; Parliamentary Bills ; Private Bill Legislation ;

Shops Acts; Theatres for Films; Theatrical Employers; and Wild Birds. [9]

The authority of the H.O. arises first from the prerogative power in connection with the maintenance of the King's Peace, in virtue of the Home Secretary being a Principal Secretary of State to the King and adviser of His Majesty in the exercise of his prerogative powers; secondly and mainly, by reason of powers and duties created by statute. The H.O. is often made responsible for the enforcement of Acts of Parliament which bring new subject-matters under departmental control, e.g. the control of advertisements in streets and of cinemas.

A policy of transforming the Home Secretary into a Minister of Justice, and of arranging that he should shed all functions which would be inconsistent with such a title, has often been advocated, but of recent years the movement has made little headway. [10]

In the administration of its varied duties, whether executive, i.e. the actual carrying out of Acts of Parliament, such as the Factory and Workshop Acts, or in supervising the work of local authorities, the H.O. is divided into seven divisions, comprising:

A. *The Industrial Division* dealing with the Factory Acts, Shops Acts, Truck Acts and workmen's compensation.

B. *The Immigration Division* dealing with aliens and naturalisation, and the administration of the liquor laws.

C. *The Criminal Division* dealing with all criminal matters, except police administration and finance.

D. *The Children's Division* dealing with H.O. schools, probation and the employment of children.

E. *Miscellaneous Division* dealing with all subjects not assigned to any other division, including registration of electors and elections, private Bills, explosives, dangerous drugs and vivisection.

F. *The Police Division* dealing with police, fire brigades and the maintenance of order.

G. *The Irish Division* dealing with work relating to Northern Ireland, the Channel Islands and the Isle of Man.

Each of these divisions is controlled by an Assistant Secretary who is responsible to one of the Assistant Under-Secretaries of State. [11]

The powers and responsibilities of the H.O. in the matters indicated at the beginning of this article are as follows.

Administration of Justice.—The grant of a separate commission of the peace or of a separate court of quarter sessions to a borough is made upon the advice of the Home Secretary (a).

The appointment of clerk to the justices is subject to confirmation by the H.O., which also makes regulations under the various Acts as to the fees of solicitors and counsel, and allowances to witnesses in criminal cases for the prosecution or defence (b).

The recorder in a borough with a separate court of quarter sessions is appointed by the Crown upon the recommendation of the Home Secretary from persons of five years standing at the Bar (c). Stipendiary magistrates are similarly appointed by the Crown upon the recommendation of the Home Secretary from barristers of seven years standing in the case of a borough (d), and five years standing in

(a) Municipal Corporations Act, 1882, ss. 156, 162; 10 Statutes 627, 629.

(b) The Home Office by Sir E. Troup, 2nd ed., p. 74.

(c) Municipal Corpn. Act, 1882, s. 163; 10 Statutes 629.

(d) *Ibid.*, s. 161.

the case of an urban district with a population of more than 25,000 persons (e), upon application being made to him by the council.

The police courts in the metropolitan police district are under the control of the Home Secretary, and the metropolitan police magistrates are appointed upon his recommendation (f). [12]

Burial Grounds.—As respects burial grounds provided under the Burial Acts, 1852 to 1906, several functions of the Home Secretary were transferred to the M. of H. by sect. 4 and the First Schedule to the Burial Act, 1900 (g). But the Home Secretary deals with questions arising on the consecration of burial grounds and as to the building of chapels, and approves tables of fees to ministers and sextons for their services (h). [13]

Bye-Laws.—Although most bye-laws are subject to confirmation by the M. of H., the Home Secretary confirms bye-laws (see title BYE-LAWS) made by local authorities under the Advertisements Regulation Acts, 1907 and 1925 (i) (see title ADVERTISEMENTS), or for the good rule and government (see title GOOD RULE AND GOVERNMENT) of a county or borough and for the prevention and suppression of nuisances therein under sect. 249 of L.G.A., 1933 (k), or for the regulation of the seashore and promenades under sects. 82, 83 of the P.H.As. Amendment Act, 1907 (l) (see title ESPLANADES, PROMENADES AND BEACHES), or as to the employment of children and young persons under Part II. of the Children and Young Persons Act, 1933, see sect. 27 of that Act (m). (See title EMPLOYMENT OF CHILDREN AND YOUNG PERSONS.) [14]

Carbide of Calcium, Storage of.—Upon the advice of the H.O., an Order in Council was made by which the provisions of the Petroleum (Consolidation) Act, 1928 (n), were extended to carbide of calcium. [15]

Celluloid and Cinematograph Films, Storage of.—By sects. 4 (1), 9 of the Celluloid and Cinematograph Film Act, 1922 (o), borough and district councils are responsible for the enforcement of the Act. The Home Secretary may make regulations under sect. 1 of the Act and the H.O. exercises a general supervision over the administration of the Act and regulations (p). [16]

Children and Young Persons.—The important changes made by the Act of 1933 (q) in the treatment of juvenile offenders, and of children and young persons in need of care or attention are dealt with by the H.O. through the Children's Division. The alterations in the law and the views of the Secretary of State thereon were fully set out in a pamphlet (r) addressed to clerks of justices, county and borough councils

(e) Stipendiary Magistrates Act, 1863; 11 Statutes 309.

(f) Metropolitan Police Courts Act, 1839, s. 3; 11 Statutes 249.

(g) 2 Statutes 251, 253.

(h) See Vol. II., p. 840; Vol. III., pp. 470, 472.

(i) 13 Statutes 908, 1118.

(j) 26 Statutes 420.

(k) 13 Statutes 941. See s. 9 of the Act; 13 Statutes 914.

(l) 26 Statutes 190.

(m) 13 Statutes 1170, and S.R. & O., 1929, No. 992.

(n) *Ibid.*, 980, 981.

(o) The Home Office, by Sir E. Troup, 2nd ed., 1926.

(p) Children and Young Persons Act, 1933; 26 Statutes 168.

(q) H.O. Pamphlet dated August 9, 1933, "Juvenile Offenders: Children and Young Persons in need of Care and Protection."

and local education authorities. The constitution of juvenile courts, the procedure and the premises in which such courts may be held were indicated, together with notes as to the extension of jurisdiction and as to reports of juvenile court proceedings. The provision of remand homes which was formerly the responsibility of the police, was transferred by sect. 77 of the Act to the councils of counties and county boroughs. In the matter of probation, the Secretary of State called attention to the fact that probation implied supervision in the open, and ought not to be used as a means of securing the training of an offender in an institution. Comprehensive suggestions were also made as to the class of young person whose training might best be secured in one of the H.O. schools. The boarding out of children and young persons in the care of local authorities, if they were willing to undertake the responsibility, was also dealt with.

Under sect. 92 of the Act (s), the Home Secretary may, with the consent of a local authority, appoint officers of the council to conduct inspections of voluntary homes for children or young persons, or may cause any institution where children and young persons are maintained to be inspected from time to time if the institution is not already under inspection by a Government department.

The H.O. schools conducted by private associations or local authorities are supported by donations, subscriptions and profits from industrial work, supplemented by a Government grant made on the recommendation of the Home Secretary with the approval of the Treasury; and a staff of inspectors is maintained by the H.O. for the supervision of these schools. (See title INFANTS, CHILDREN AND YOUNG PERSONS.) As to the provisions dealing with the employment of children and young persons, see pp. 358—367 of Vol. V. [17]

Clubs, Registration of.—The Home Secretary is responsible for the preparation of the annual statistics as to clubs registered with the clerk to the justices of each petty sessional division (t). (See Vol. III., p. 247.) [18]

Coroners.—The Home Secretary may direct a county council to divide, or to alter the division of, the county into coroners' districts (u). Although the appointment of the coroner is made by a county council or borough council, in the event of a disagreement between the council and the coroner as to salary, it is fixed by the Secretary of State under sect. 5 of the Coroners (Amendment) Act, 1926 (w). (See also title CORONERS.) [19]

Cremation.—Regulations of the Home Secretary (x) made under sect. 7 of the Cremation Act, 1902 (y), govern the inspection and maintenance of crematoria, and the conditions under which the burning of remains may take place. The regulations also require every crematorium to be open to inspection at any reasonable time by any person appointed by the Home Secretary or by the M. of H. (a). (See title CREMATION.) [20]

Elections.—Under the Representation of the People Act, 1918 (b), as amended by an Order in Council (c), the Home Secretary was con-

(s) 26 Statutes 280.

(t) The Home Office, by Sir E. Troup, 2nd ed., p. 180.

(u) Coroners (Amendment) Act, 1926, s. 12; 3 Statutes 785.

(w) 3 Statutes 782.

(x) S.R. & O., 1980, No. 1016; 23 Statutes 15.

(y) See title CREMATION at p. 256 of Vol. IV.

(c) S.R. & O., 1921, No. 959.

(y) 2 Statutes 282.

(b) 7 Statutes 548.

stituted the central authority for carrying the Act into effect. Although the Government grant towards the cost of registration of voters and the holding of elections is settled by the Treasury, the H.O. decides as to the payment of expenses outside the Treasury scale.

It is also the duty of the H.O. to advise as to the making of Orders in Council prescribing fees and forms, and for altering when necessary the statutory rules regulating the registration of electors including the arrangements for absent voters. Some thirty such orders have been made. General or special directions are also given to registration officers as to the arrangements for carrying out their duties; and under sect. 31 of the 1918 Act (*d*) the H.O. control the alteration of polling districts and the fixing of polling places at parliamentary elections.

Originally the supervision of elections of district and parish councillors rested with the Local Government Board, but by the Order in Council already mentioned (*e*), the duties in connection with these elections were transferred to the Home Secretary. This arrangement has been perpetuated by the provisions of the L.G.A., 1933, relating to elections; see *e.g.* sects. 40 and 54 of that Act (*f*). Local government electoral divisions, alteration and formation of wards (*g*), and review of electoral districts (*h*) are also matters for the H.O. (See also title ELECTIONS.) [21]

Exhumation.—Before any body or the remains of any body can be disinterred, a licence must be obtained from the Secretary of State (*i*) except in cases where the body is removed from one consecrated place of burial to another under a faculty (*j*). Where the disinterment under a faculty is for some purpose other than reburial it cannot be acted upon without licence (*k*). [21A]

Explosives.—Under the Explosives Acts, 1875 and 1923 (*l*), the H.O. supervise local authorities in the execution of their functions under these Acts. Before any new factory or magazine can be established a licence from the Home Secretary and the assent of the local authority must be obtained (see p. 396 of Vol. V.). The Act of 1875 lays down rules as to the position and construction of factories, magazines, stores and registered premises, and the methods of storage, but these requirements may be modified by Orders in Council or by the H.O. regulations to meet altered conditions (*m*). The Acts are enforced by a chief inspector and other inspectors of the H.O. Regular inspections are carried out, and under sect. 66 of the Act of 1875 (*n*), the Home Secretary may order a formal inquiry into any serious explosion, and the inspectors in holding such an inquiry have the powers of a Court of Law. See, further, title EXPLOSIVES. [22]

Factory and Workshop Acts.—These Acts are administered mainly by inspectors appointed by the Home Secretary and controlled by him. Local authorities are, however, responsible for the enforcement of various provisions of the Acts (see p. 402 of Vol. V.). The Home Secretary may, under sect. 4 of the Factory and Workshop Act,

(*d*) 7 Statutes 566, as amended by Order in Council.

(*e*) S.R. & O., 1921, No. 959.

(*f*) 26 Statutes 325, 332.

(*g*) L.G.A., 1933, ss. 11, 25, 37; 26 Statutes 310, 317, 322.

(*h*) L.G.A., 1929, s. 50; 10 Statutes 919.

(*i*) The Burial Act, 1857, s. 25; 2 Statutes 236.

(*j*) See 3 Halsbury (2nd Edn.), p. 613, note (*m*).

(*k*) See *R. v. Tristram* (1890), 80 L. T. 414; 7 Digest 561, 365.

(*l*) 8 Statutes 385, 447.

(*m*) The Home Office, by Sir E. Troup, 2nd ed., p. 189.

(*n*) 8 Statutes 422.

1901 (o), authorise one of his inspectors to carry out the duties of a local authority who are in default (see p. 417 of Vol. V.). (See also title **FACTORIES AND WORKSHOPS.**) [23]

Fairs.—Power to alter the date of, or to abolish, a fair was given to the Home Secretary by the Fairs Acts, 1871 and 1873 (p). (See title **MARKETS AND FAIRS.**) [24]

Fires and Fire Brigades.—Save in connection with explosives, the H.O. have no statutory powers in the matter of dangers from fire. An order of the Home Secretary must, however, be obtained to put in force Part VIII. (Fire Brigade) of the P.H.As. Amendment Act, 1907 (g). (See title **FIRE PROTECTION.**) [25]

Inebriates.—At the present time, no certified reformatory is maintained either by a county council or a borough council under the Inebriates Act, 1898 (r), or by the State, and the effort to cure drunkenness by institutional treatment seems almost to have come to an end. (See also title **INEBRIATES, INSTITUTIONS FOR.**) [26]

Intoxicating Liquor, Sale of.—By the Licensing Act, 1904 (s), the Home Secretary was made the central authority for the administration of the Act, and was given the duty of making rules for the procedure of the local authorities in the management of the compensation funds. His approval was also necessary to loans and to the appointment and remuneration of officers (t). (See title **INTOXICATING LIQUORS.**) [27]

Petroleum Spirit.—Not more than three gallons of petroleum spirit, as defined in sect. 23 of the Petroleum (Consolidation) Act, 1928 (u), may be kept without a licence from the local authority, unless it is motor spirit kept solely for use in a light locomotive and not for sale, and kept in accordance with regulations made by the Home Secretary (w).

Where the local authority refuse to grant a licence for the keeping of petroleum, the Home Secretary may direct that an inquiry be held by one of the Inspectors of Explosives and may grant a licence with or without conditions (a). (See title **PETROLEUM.**)

Under sect. 11 of the Act (y), local authorities may make bye-laws for regulating the appearance of petroleum filling stations or prohibiting the establishment of such stations in certain areas. Bye-laws so made must be confirmed by the H.O. (See title **PETROL FILLING STATIONS.**) [28]

Police.—The Home Secretary is the central authority for the various police forces in England and Wales, comprising the City of London police, the Metropolitan Police, the county and borough police forces and the River Tyne police. Over the Metropolitan Police, the Home Secretary exercises direct control. He appoints the Chief Commissioner and the Assistant Commissioners, and controls the expenditure. By sect. 4 of the Police Act, 1919 (z), the Home Secretary was allowed

(o) 8 Statutes 520.

(p) Fairs Act, 1871, s. 3 (11 Statutes 470), and Fairs Act, 1873, s. 6 (11 Statutes 479).

(q) Act of 1907, s. 3 (4); 13 Statutes 912.

(r) 9 Statutes 955.

(s) 4 Edw. 7, c. 23. Repealed and replaced by the Licensing (Consolidation) Act, 1910.

(t) The Home Office, by Sir E. Troup, 2nd ed., p. 179.

(u) 13 Statutes 1185.

(w) Act of 1928, s. 10; 13 Statutes 1176. For the regulations, see S.R. & O. 1929, No. 952.

(x) *Ibid.*, s. 3; *ibid.*, 1172.

(y) 13 Statutes 1176.

(z) 12 Statutes 808.

to make regulations as to the government, mutual aid, clothing, pay, allowances, pensions and conditions of service of all police forces. For the purpose of securing efficiency as to numbers and discipline, inspectors of constabulary are appointed by the Home Secretary under sect. 15 of the County and Borough Police Act, 1856 (*a*), and it is upon the reports of these inspectors that the Home Secretary grants his certificate of efficiency. Grants from Government funds towards police expenses are paid by the Home Secretary. (See titles METROPOLITAN POLICE, POLICE, POLICE, CITY OF LONDON.) [29]

Private Bill Legislation.—The Home Secretary reports to the Parliamentary Committees on clauses creating new offences, or increasing penalties for offences or seriously restricting the liberty of the subject. [30]

Shops Acts.—Under sect. 5 of the Shops Act, 1912 (*b*), orders made by a local authority, fixing the hours during which shops must be closed, are to be confirmed by the Home Secretary, who may direct a local inquiry to be held under sect. 7 of the Act. A closing order may also be revoked by him, and regulations for carrying the Act into effect may be made by him under sect. 17 (*c*). For the purposes of the Shops Act, 1934 (*d*), the Home Secretary has made regulations as to the employment of young persons in shops (*e*). [31]

Sunday Cinemas.—The H.O. is the authority for confirming orders made under sect. 1 of the Sunday Entertainments Act, 1932 (*f*), and to appoint a person to hold inquiries under that Act in relation to rural districts. For powers, see *ibid.*, Sched. [31A]

Theatres for Exhibition of Films.—By sect. 1 of the Cinematograph Act, 1909 (*g*), the Secretary of State was authorised to make regulations (*h*) for securing the safety of the public in places where cinematograph films were exhibited, and the duty of enforcing the regulations was placed upon the local authorities. The duties of the H.O. are limited to the making of the regulations and a general supervision of their working. (See also title CINEMATOGRAPHS.) [32]

Theatrical Employers.—Under sect. 1 of the Theatrical Employers Registration Act, 1925 (*i*), every registration authority, *i.e.* every county and borough council, must establish and keep a register of theatrical employers in accordance with rules (*k*) made by the Home Secretary under sect. 12 of the Act. (See also title THEATRES.) [33]

Wild Birds.—By sect. 8 of the Wild Birds Protection Act, 1880 (*l*), the Home Secretary, upon the application of a county or county borough council, may extend or vary the time during which the taking or killing of wild birds was prohibited, and by sect. 3 of the Act of 1894 (*m*) the powers of the Secretary of State were extended so that an order made by him might include wild birds not already protected and their eggs. (See also title WILD BIRDS.) [34]

(a) 12 Statutes 815.

(c) *Ibid.*, 923.

(d) 27 Statutes 226.

(e) S.R. & O., 1934, No. 1325; 27 Statutes 241.

(f) 25 Statutes 921.

(h) S.R. & O., 1928, No. 988, as amended by S.R. & O., 1930, No. 361.

(i) 19 Statutes 358.

(l) 1 Statutes 357.

(b) 8 Statutes 617.

(c) For regulations, see S.R. & O., 1912, Nos. 316, 386.

(g) 19 Statutes 352.

(k) S.R. & O., 1925, No. 1140.

(m) *Ibid.*, 360.

HOMEWORK

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See also title : FACTORIES AND WORKSHOPS.

Responsibilities of Borough and District Councils.—The responsibilities of these councils in connection with homework arise from sect. 2 and sects. 107—115 of the Factory and Workshop Act, 1901 (*a*), the effect of which is given below. Sect. 2 applies the provisions of the P.H.A., 1875, as to nuisances. Other provisions of that Act as to the sanitary state of houses also apply, because by the definition in sect. 4 of that Act (*b*), "house" includes factories and other buildings in which persons are employed. The term "homework" applies to such classes of work as may from time to time be specified in a special order of the Home Secretary (*c*), and may be carried on in premises. Certain requirements apply to the premises from which the work is given out. [35]

Premises in which Work is done.—These include domestic factories and domestic workshops as defined in the Act (*d*) and also dwelling-houses or buildings occupied therewith in which work of a class included in the Secretary of State's order is carried on (*e*). The borough or district council are also responsible for the sanitary condition of the building, for by sect. 2 of the Act of 1901, the provisions of sect. 91 of the P.H.A., 1875 (*f*), are applied to workshops and workplaces, and every workshop and workplace within the meaning of the Act of 1875 (*g*), must be kept free from effluvia arising from any drain, closet, urinal or other nuisance, and unless so kept is deemed to be a nuisance liable to be dealt with summarily under the Act of 1875. This and the other provisions of sect. 2 are dealt with on pp. 405—409 of Vol. V.

Consequently, the cleanliness, ventilation and overcrowding of the premises are matters under the control of the council. [36]

Special Classes of Work.—In order that a council may ascertain what premises are being used for the purpose of homework on the specified classes of work, the occupier of every factory or workshop, or place

(*a*) 8 Statutes 518, 572—577.

(*b*) 18 Statutes 624.

(*c*) Factory and Workshop Act, 1901, s. 107; 8 Statutes 572. A number of classes of work have been so specified; see 14 Halsbury (2nd Edn.), 591.

(*d*) *Ibid.*, s. 115.

(*e*) *Ibid.*, ss. 108—110.

(*f*) 13 Statutes 601.

(*g*) Neither of these expressions is defined in the Act of 1875.

from which work is given out, and every contractor employed by such occupier in the business of the factory or workshop, must keep a list showing the names and addresses of persons directly employed by him, either as workmen or contractors (*h*), in the business of the factory or workshop, but outside it, and the places where they are employed (*i*). Any contractor employed in the business of the factory or workshop must keep similar lists. The lists are to be kept in the form and manner (*k*), and are to show the particulars, prescribed by the Home Secretary. The occupier or contractor is to send a copy of these lists to the borough or district council in whose area the factory or workshop is situate, twice a year, on or before February 1 and August 1. An officer of the council duly authorised may inspect the original lists at any time (sect. 107 (*g*)). The council must examine the copies received, and, if there is any outworker on the list employed outside their area, must furnish his name and place of employment to the council of the area in which he is employed (sub-sect. (2)). The council receiving copies or particulars under this section must show them to the departmental inspector of factories if so desired. The penalty for a contravention of this section by a contractor or occupier is a fine of not exceeding 40s. for the first offence, and of not exceeding £5 for any subsequent offence (sub-sect. (5)) (*l*). Sect. 145 (*m*) gives a right of appeal to quarter sessions. For forms of the notice by one council to another, see *Encyclopædia of Forms and Precedents*, Vol. XII., p. 192. [37]

Employment in Unwholesome Premises.—As to the classes of work (*n*) specified by the Home Secretary, if a council find that a place within their area where work is carried on for the purpose of or in connection with the business of a factory or workshop or any place from which any work is given out, is injurious or dangerous to the health of the persons employed therein, they may give notice in writing to the occupier of the factory, workshop or place, or to any contractor employed by him. If the occupier or contractor, after the expiration of one month from its receipt, gives out work to be done in that place, and the place is found by the court having cognisance of the case to be so injurious or dangerous, he is liable to a fine not exceeding £10 (sect. 108). Note that this section does not deal with the owner or occupier (as such) of the unwholesome premises where the outworkers are employed; though, of course, it is possible that he may be amenable to the law in some other way. For a form of the notice required by sect. 108, see *Encyclopædia of Forms and Precedents*, Vol. XII., p. 193. The classes of work specified for the purposes of sect. 108 are the same as those specified for the purposes of sect. 107. [38]

Making of Wearing Apparel : Infectious Disease.—If the occupier of a factory or workshop, or of any place from which any work is given out, or any contractor employed by any such occupier, causes or allows wearing apparel to be made, cleaned or repaired in any dwelling-house or building occupied therewith, whilst any inmate of the dwelling-

(*h*) Neither of these expressions is defined in the Act of 1875.

(*i*) Act of 1901, s. 107; 8 Statutes 572.

(*k*) See collected Factory & Workshop Orders, published by H.M.S.O., 1933, pp. 335—337.

(*l*) 8 Statutes 573.

(*m*) *Ibid.*, 591.

(*n*) See collected Factory & Workshop Orders, published by H.M.S.O., 1933, pp. 332—337.

house is suffering from scarlet fever or smallpox, then unless he proves that he was not aware of the existence of the illness in the dwelling-house and could not reasonably have been expected to become aware of it, he is liable to a fine not exceeding £10 (sect. 109). Sect. 110 is wider; it applies to all infectious diseases required to be notified (see title INFECTIOUS DISEASES), and to "the making, cleaning, washing, altering, ornamenting, finishing and repairing of wearing apparel and any work incidental thereto," as well as to any other classes of work that may be specified in a special order of the Secretary of State (o). If any inmate of a house is suffering from such an infectious disease, the council may make an order forbidding any work within the section to be given out to any person living or working in that house, or such part of it as may be specified in the order (sect. 110 (1)). Any order so made should be served on the occupier of the factory, workshop or place, or on the contractor employed by any such occupier (*ibid.*).

An order may be made notwithstanding that the person suffering from an infectious disease may have been removed from the house, and can be made either for a specified time or subject to the condition that the house or part be disinfected to the satisfaction of the M.O.H. or that other reasonable precautions shall be adopted (sect. 110 (2)).

In a case of urgency, the powers conferred on the council by this section may be exercised by any two or more members of the council acting on the advice of the M.O.H. (sect. 110 (3)).

Any occupier or contractor contravening an order served upon him is liable to a penalty not exceeding £10. An appeal will lie against a conviction for such an offence (sect. 145), but not against the council's order. For forms of such orders, see *Encyclopædia of Forms and Precedents*, Vol. XII., pp. 194, 195. [39]

London.—The law in London is the same as generally applicable elsewhere, with the exception that the councils concerned are in London, the metropolitan borough councils and the Common Council of the City (sect. 153 (4)). But sect. 2 of the Act of 1901 does not extend to London and its effect is embodied in sect. 2 of the P.H. (London) Act, 1891 (p). [40]

(o) See collected *Factory & Workshop Orders*, published by H.M.S.O., 1933, pp. 333—396.

(p) 11 Statutes 1025. See also title *Factories and Workshops* at p. 415 of Vol. V.

HONOURS

See HUNDREDS.

HOP PICKERS

See FRUIT AND HOP PICKERS.

HORSEFLESH, SALE OF

See also title : MEAT.

The sale of horseflesh for human food is dealt with by the Sale of Horseflesh, etc., Regulation Act, 1889 (a), sect. 7 of which defines "horseflesh" as including the flesh of asses and mules, and as meaning horseflesh, cooked or uncooked, alone or accompanied by or mixed with any other substance. The object of the statute is not to prevent the sale of horseflesh as food, but to ensure, as far as possible, that it shall not be sold to customers under the guise of ordinary meat. By sect. 2, horseflesh may not be sold for human food to a purchaser who has asked to be supplied with some meat other than horseflesh, or with some compound article of food which is not ordinarily made of horseflesh, *e.g.* potted meat or sausages. Nor may horseflesh be sold or exposed or kept for sale for human food elsewhere than in a shop, stall or place over or upon which there are painted, posted, or placed in legible characters of not less than four inches in length, and in a conspicuous position, words indicating that horseflesh is sold there (sect. 1). Although in some localities horseflesh is sold for food, it is doubtful whether this provision is generally observed or enforced. The authority for the enforcement of the Act is the local sanitary authority; and the M.O.H., sanitary inspector or other officer duly instructed may inspect any meat believed by him to be horseflesh which is exposed or deposited for sale or for preparation for sale, as human food, at any place other than a shop or stall bearing the inscription required by sect. 1. The officers mentioned may enter a suspected building on the warrant of a justice, for the grant of which warrant a sworn complaint must be made (sect. 4). Obstruction of an officer is an offence. [41]

The officer may seize and carry away any meat inspected by him and bring it before a justice of the peace (sect. 3). If it appears to the justice that meat seized as above mentioned is horseflesh he may make such order with regard to the disposal thereof as he may think desirable; *i.e.* presumably he may order it to be destroyed or sold only for cats' meat; and the person in whose possession or on whose premises the meat was found is deemed to have committed an offence under the Act, unless he proves that the meat was not intended for human food contrary to the provisions of the Act (sect. 5). Similarly, if horseflesh is exposed for sale at premises not marked with the required inscription, the burden of proving that the material was not intended for sale for human food rests on the vendor (sect. 6). It will be observed that this provision does not cover premises used for the preparation of horseflesh for sale, where the meat is not exposed for sale. The

(a) 8 Statutes 800.

Act does not in fact require the inscription to be placed on these premises.

A person offending against any of the provisions of the Act is liable on summary conviction to a fine not exceeding £20 (sect. 6). [42]

London.—The Sale of Horseflesh, etc., Regulation Act, 1889, extends to London, and under sect. 8 of the Act (b), the metropolitan borough councils and the Common Council of the City of London to whom the powers of the Commissioners of Sewers were transferred by the City of London Sewers Act, 1897 (c), are the local authorities for the purposes of the Act. [43]

(b) 8 Statutes 802.

(c) 60 & 61 Vict. c. cxxxiii.

HORSES, PONIES, MULES OR ASSES

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EFFECT OF THE TOWN POLICE CLAUSES ACT, 1847 - -	16	LONDON - - -	17

See also titles :

ANIMALS, KEEPING OF ;
CATTLE ON HIGHWAYS ;
HACKNEY CARRIAGES ;

ROAD TRAFFIC ;
SLAUGHTERHOUSES AND KNACKERS' YARDS.

Introduction.—This article deals with horses, ponies, mules and asses, the proprietors of which ply for the hire of them. By sect. 172 of the P.H.A., 1875 (a), any local authority may license the proprietors, drivers and conductors of horses, ponies, mules or asses standing for hire within their area in the same manner as they may license proprietors and drivers of hackney carriages, and they may make bye-laws for regulating stands and fixing rates of hire, and as to the qualifications of the drivers and conductors, and for securing their good and orderly conduct while in charge. [44]

Effect of the Town Police Clauses Act, 1847.—For the licensing of hackney carriages under this Act, see Vol. VI., pp. 284, 285. In a memorandum issued by the Local Government Board in 1879 with their model bye-laws (b), it is pointed out that the sections of the Town Police Clauses Act, 1847, which *mutatis mutandis*, may be considered as having reference, either wholly or in part, to the manner, incidents and consequences of the licensing of the proprietor, driver and conductor of horses, etc., standing for hire, are sects. 37, 39—46 (as amended by sect. 171 of the P.H.A., 1875), and sects. 47—67 (c). The effect

(a) 18 Statutes 697. The section was extended to all rural districts by S.R. & O., 1931, No. 580 ; 24 Statutes 202.

(b) Made under s. 68 of the Act of 1847 ; 19 Statutes 53 ; see Mackenzie and Handford's Model Bye-Laws, Vol. I., pp. 397, 399.

(c) 10 Statutes 48—53.

of these sections (*d*) is to make it necessary for the proprietors, drivers and conductors to obtain at a small fee, licences from the local authority, which are to be in force for one year or until the general licensing meeting of the council, and may be suspended or revoked by them. They also place a penalty on a proprietor employing an unlicensed driver acting without a licence. The proprietor is to retain the licence, but to produce it, if necessary, and to return it to the driver or conductor if he leaves the service except for misconduct. By sect. 45 the number of the licence must be displayed. Sects. 51, 52, 57 and 67, which refer to the number of persons riding in a carriage, the deposit to be paid if a driver of a carriage is requested to wait, and the penalty for damaging a carriage hardly seem to be appropriate to animals; but the penalties for demanding more than the legal fare or making agreements for excessive fares set forth in sects. 54—56 in regard to their hiring, may apply. Sections dealing with the behaviour of drivers would also apply, such as sect. 61 imposing a penalty for drunkenness or furious driving, sect. 62 for leaving an animal (in this case) unattended in a street or place of public resort, and sect. 64 on the obstruction of other drivers; while sect. 63 gives compensation for damage done by a driver, sect. 65 gives compensation to a driver who attends before a justice to answer complaints which are not substantiated, and sect. 66 gives the right to recover an unpaid fare. [45]

Bye-Laws.—These are rarely made at the present day, even for seaside resorts, as the control of the local authority by means of licensing is found to be sufficient. The model bye-laws of the M. of H. (*e*) regulate the position of stands for hiring, their use and the rates of hire. They then prescribe rules for securing the good and orderly conduct of drivers and conductors while in charge of animals; touting is prohibited; they must keep appointments; unfit animals must not be used; the saddle and harness must be in good condition; the driving must be careful; and not more than two horses, ponies or mules, or more than four asses can be driven at a time. [46]

London.—Sect. 172 of the P.H.A., 1875, does not extend to London. There is no comparable licensing power in London. [47]

(*d*) See title HACKNEY CARRIAGES.

(*e*) These may be purchased for 2*d.* at H.M. Stationery Office, Kingsway, London, W.C.2.

HORTICULTURAL PRODUCE, MARKING OF

See MARKING OF AGRICULTURAL AND HORTICULTURAL PRODUCE.

HORTICULTURE

See SEEDS.

HOSPITAL AUTHORITIES

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See also titles :

AMBULANCES ;
BACTERIOLOGICAL LABORATORIES ;
CLINICS ;
DISPENSARIES ;
HOSPITAL SERVICES (LONDON) ;
HOSPITAL STAFF ;
HOSPITALS ;

ISOLATION HOSPITALS ;
MEDICAL SUPERINTENDENT ;
MENTAL HOSPITALS ;
POOR LAW MEDICAL OFFICER ;
VOLUNTARY HOSPITALS AND INSTITU-
TIONS.

Introduction.—All local authorities have power to provide hospitals for their area. The smaller authorities (councils of non-county boroughs and of urban and rural districts) have usually exercised this power to the extent only of providing hospitals for the isolation and treatment of acute infectious diseases, but the councils of some populous boroughs and urban districts have provided hospital accommodation for patients suffering from non-communicable diseases, and others have established maternity homes or lying-in hospitals. One U.D.C. (Barry) have provided a surgical and accident hospital. The need of hospitals for the treatment of non-infectious patients has arisen most prominently in the administration of the Poor Law, while certain other special responsibilities, such as the treatment in hospital of persons suffering from tuberculosis and venereal disease, have been placed mainly upon county and county borough councils and not on sanitary authorities in general. County councils also share a responsibility for the provision of isolation hospitals to an increasing extent. In the result, therefore, county and county borough councils are concerned with hospital provision and management of much greater scope than are other types of local authority. [48]

Apart from the Poor Law Act, 1830, the basis of the law as to hospitals is contained in the P.H.A., 1875, as modified and amplified by the L.G.A., 1929, and by Regulations of the M. of H. The Isolation

Hospitals Acts, 1893 and 1901, mentioned later, form a separate code. The power contained in sect. 131 of the P.H.A., 1875 (*a*), to provide or contract for the use of "hospitals or temporary places for the reception of the sick" appears to have arisen from an appreciation of the need of accommodation for the sick during epidemics of acute communicable disease, and to have been interpreted in that sense, as a rule, by the Local Government Board and the M. of H., and by the local authorities themselves until 1880, though in the case of *Wilmington Local Board v. Manchester Corporation* (*b*), CURRY, J., had expressed the view that a hospital provided under sect. 181 is for the use of sick inhabitants, whether the sickness be infectious or not. On the other hand, the necessity of special institutions for the sick under the Poor Law appears to have been realised gradually and to have arisen as a development of the power of boards of guardians to provide workhouses. Accordingly, the law in relation to the provision and management of hospitals under the P.H.As. is concise, though coloured by the earlier preoccupation of the Government with infectious disease, while that contained in the Poor Law Act and the regulations thereunder, still reflects the meticulous control over management, and the concern with the behaviour of officers and inmates, which had been found necessary for the management of workhouses. All kinds of hospitals of local authorities come under the general designation "council hospitals," as distinct from voluntary hospitals, but it is convenient to classify council hospitals according to whether they are provided and managed under the P.H.As. or other cognate Acts, or under the Poor Law Act. [49]

The power to provide hospitals or places for the reception of the sick given to sanitary authorities by sect. 131 of the P.H.A., 1875 (*supra*), has been extended to county councils (*c*). This provision enables a local authority either to build such an institution, or to contract for the use of a hospital or place (or part of one) not in their possession, or by agreement to pay the managers of any hospital for the reception of patients, either by an annual sum or in some other way. The provision of a joint hospital by a combination of two or more authorities is also permitted (see *post*, p. 20). Subscriptions to voluntary hospitals, apart from payments for specific services, are also allowed (*d*) so long as the total expenditure incurred in this way in any one year does not exceed the produce of a rate of $1\frac{1}{4}d.$ in the £, or such greater sum as the M. of H. may by order permit (*e*). The power to provide, contribute to or subscribe to hospitals is definitely limited to such institutions as will serve the inhabitants of the council's area. A local authority have no general power under the P.H.As. to afford hospital accommodation to persons who are not inhabitants of their area or to contribute toward the hospital treatment of such persons. A definite exception to this rule, however, has been made in cases of venereal disease (see *post*, p. 25), and the powers and duties of authorities, other than county councils, under the P.H.A., 1875, have recently been extended by regulation to cover the hospital treatment of persons suffering from infectious disease who are temporarily resident in their

(a) 18 Statutes 678.

(b) [1893] 2 Ch. 19; 38 Digest 190, 346.

(c) See L.G.A., 1929, s. 14 (1); 10 Statutes 891.

(d) P.H.A., 1925, s. 64; 13 Statutes 1143, and L.G.A., 1929, s. 14 (1); 10 Statutes 891.

(e) L.G.A., 1929, s. 75; 10 Statutes 932.

area (f). Although the basic law is concerned with places for the reception of the sick, the meaning of the term has been extended, in the case of county and county borough councils, to include establishments, such as maternity homes or hospitals, for the reception of pregnant women (g) as these are not necessarily sick persons in the strict sense. A hospital may be established by a local authority for their own use outside their area, without the consent of the council of the district in which it will be situate, so long as their requirements are met as regards construction, the laying of sewers and water mains, etc. (h). [50]

Joint Use of Hospitals.—A local authority requiring hospital facilities for the inhabitants of their area may find it impossible to provide a hospital of sufficient size to be efficient and economical, because of a small population or their limited financial resources. The power of local authorities to arrange with the managers of any hospital for the reception of patients in return for payment (i) allows a local authority, who have provided an institution for the inhabitants of their own area, also to accommodate patients from other areas, the councils of which may have agreed to pay for the reception of patients in that institution. So long as a hospital is provided primarily for the sick inhabitants of the area whose council have established it, there appears to be no legal obstacle to its being planned or extended on lines sufficient to serve the needs of other areas with whose councils agreements have been made. An arrangement of this kind avoids the somewhat elaborate arrangements attaching to the formation of an independent joint hospital board or the disadvantages suffered through a joint committee being responsible to two or more authorities. The power of an authority managing a hospital to include on a hospital committee persons who are not members of the authority (k) enables them to give the contracting councils a voice in the management, by adding members of these councils to the committee. Agreements of this kind usually provide for the payment of a fee to cover overhead charges, in addition to the average daily cost of the maintenance of a patient in the hospital. (See p. 80 of Vol. IV.) [51]

Joint Hospitals.—Two or more councils may desire to establish a hospital for their common use and this course is expressly authorised by sect. 131 of the P.H.A., 1875, but difficulties arise by reason of the necessity of vesting the land in a body corporate and of apportioning between the constituent councils loans to be raised, and these difficulties have prevented a wide use of the power of combination. The management of the institution, and all other functions in relation to it, except the levying or issuing of a precept or the borrowing of money, may be delegated to a joint committee constituted by agreement between the constituent councils, but there is no power to appoint to such a committee any person who is not a member of a constituent council (l). These enactments provide the only general means enabling a county council to enter into the joint management of a hospital with another

(f) S.R. & O., 1933, No. 674.

(g) L.G.A., 1920, s. 14 (2); 10 Statutes 891.

(h) *Widlington Local Board v. Manchester Corpn.*, [1893] 2 Ch. 19; 38 Digest 199, 346.

(i) P.H.A., 1875, s. 131; 18 Statutes 678.

(k) L.G.A., 1933, s. 85 (3); 26 Statutes 352.

(l) *Ibid.*, s. 91; 26 Statutes 355.

authority, but there are special means of combination between county and county borough councils for the treatment of tuberculosis and for the provision of poor law hospitals and institutions (see *infra* and *post*, p. 26). The allocation of costs is a matter for agreement under sect. 93 of the L.G.A., 1933, between the co-operating authorities, but, in the event of disagreement, the question is determined either by the county council, if boroughs or districts within their county are alone involved, or, in other circumstances, by the M. of H.

If the contracting bodies are borough or district councils, a joint hospital district may be constituted by a provisional order of the Minister for the purpose of establishing and managing a joint hospital serving the whole or parts of the several boroughs or districts (*m*). This is the method by which a combination for hospital purposes has been most frequently achieved (see *post*, p. 23). Such an order sets up a joint hospital board (*n*), consisting of ex-officio and elective members, which becomes in effect an independent authority with power to hold lands and to borrow money (*o*). Their expenses are borne by the contributing authorities in proportion to their rateable values unless the provisional order determines otherwise (*p*). The formation of a joint board automatically cancels the hospital responsibilities of each separate sanitary authority in any part of the united district (*q*) unless the Minister authorises any or all of the separate authorities to continue to exercise their powers in this respect (*r*). The confirmation of a provisional order by Act of Parliament is necessary. [51A]

County and county borough councils may join together to make arrangements for the treatment of tuberculosis (*s*). The procedure resembles the formation of a joint board of sanitary authorities (*supra*), and a joint committee or other body set up for the purpose is a body corporate and has the same independent status as a joint hospital board. A provisional order confirmed by Parliament is not necessary, but an order can be made only by the Minister with the consent of the councils concerned. An arrangement of this kind usually covers the provision of sanatoria, but may also include hospitals and dispensaries, all of which may be provided under the P.H.As. It permits not only of the erection of larger and more economical institutions than each combining authority would provide for their own area, but also of better classification of patients in institutions according to the stage or type of disease from which they suffer. Six joint committees of this kind exist at the present time (1935) in England, mostly by combination of councils within the boundaries of a single county, but in one instance formed by two adjacent county councils (*t*). The most notable combination of this kind is to be found in Wales, where all the county and county borough councils have assigned their functions in the treatment of tuberculosis to what is virtually a joint authority, established by special charter of incorporation. (See title *WELSH NATIONAL MEMORIAL*.) [52]

Institutions for Tuberculosis.—Encouragement to county councils to embark on schemes for the treatment of tuberculosis and to combine

(*m*) P.H.A., 1875, s. 279; 13 Statutes 742.

(*o*) *Ibid.*, ss. 244, 280.

(*q*) *Ibid.*, s. 281.

(*r*) P.H. (Prevention and Treatment of Disease) Act, 1913, s. 1; 13 Statutes

(*n*) *Ibid.*, s. 280.

(*p*) *Ibid.*, s. 283.

553.

(*s*) P.H. (Tuberculosis) Act, 1921, s. 5; 13 Statutes 972.

(*t*) M. of H. Costing Returns, to be purchased of H.M. Stationery Office.

for the purpose was afforded by the system of specific Government grants which was abolished by the L.G.A., 1920, s. 85 and Sched. II (u). County councils have now the same general power as sanitary authorities to provide places for the reception of the sick (a). The inauguration of tuberculosis schemes, however, depended upon a sanction of the Minister under sect. 8 of the P.H. (Prevention and Treatment of Disease) Act, 1918 (b), to the arrangements proposed, and under this procedure the council could establish only such institutions as the Minister approved. The Minister could himself make arrangements for the treatment of tuberculosis in any county or county borough, if he was satisfied, after hearing the council, that they had not adequately made arrangements for the treatment of tuberculosis in approved institutions, the cost of any such action in default being recoverable from the council (c). The general management of tuberculosis schemes, including institutions, may be, and usually is, delegated to a committee, which may be a sub-committee of the public health committee, and one-third of whose members may consist of persons not being members of the council (d). While it would appear that a local authority have complete freedom to establish any new institution for tuberculosis without the Minister's sanction, subject to the control exercised by the Minister over the borrowing of money (*post*, p. 29), the view of his advisers is that any modification of an existing scheme, even if it involves an extension of treatment at an institution previously approved by the Minister, requires his permission. He has, however, given a general sanction to such extensions. The continued approval of institutions is subject to specified conditions as to record-keeping, the provision of facilities for inspection of records by officers of the Ministry and compliance with the requirements of the Board of Education as to any educational arrangements for children (e). The qualifications of a medical superintendent are prescribed (f). [53]

Hospitals for Infectious Disease. (1) *Under the P.H.As.*—Hospitals for the isolation and treatment of acute infectious or communicable disease—commonly called isolation or fever hospitals—may be established by any local authority or combination of sanitary authorities in exactly the same way as any other hospital (see *ante*, p. 19).

A port sanitary authority may also provide hospital accommodation for patients brought by ships for whom they are responsible, as the authority are usually invested with the powers of sect. 181 of the P.H.A., 1875 (g), by the order constituting them a port sanitary authority. In general a separate hospital is not provided, but the port sanitary authority enter into an agreement for the reception of their patients at an existing hospital. Art. 28 of the Port Sanitary Regulations, 1933 (h), makes it the duty of a port sanitary authority to provide or arrange for the provision of hospital accommodation if required to do so by the

(u) 10 Statutes 987, 970.

(a) L.G.A., 1920, s. 14 (1); 10 Statutes 891.

(b) 13 Statutes 953.

(c) P.H. (Tuberculosis) Act, 1921, s. 1 (2); 13 Statutes 971.

(d) *Ibid.*, s. 4; *ibid.*, 972.

(e) M. of H. Circular 1072 of February 12, 1930, printed at p. 3540 of Lumley's Public Health, 10th ed.

(f) S.R. & O., 1930, No. 66, s. 3.

(g) 18 Statutes 978.

(h) S.R. & O., 1933, No. 88.

Minister (i). In any event, the Minister's approval to the course proposed must be obtained, under the continued arrangement whereby the port sanitary service ranks for a special Government grant.

If an authority of any class propose to borrow for the purpose of erecting an isolation hospital, the loan must be sanctioned by the Minister. The conditions as to site, lay-out of buildings, construction, etc., which must be complied with in order to obtain such approval have been set out in a memorandum of the Ministry (k). It will be seen that special conditions must be observed as respects hospitals for smallpox. For further details, see title ISOLATION HOSPITALS.

The general power to provide hospitals having been limited to sanitary authorities until the passage of the L.G.A., 1929, most isolation hospitals have been established by such authorities. Many of them, however, are not in a position to erect a hospital of sufficient size for economical management, and in areas with a small population even a small hospital may stand empty for considerable periods because of the discontinuity of epidemic waves in circumscribed areas. For these reasons, joint schemes for isolation hospital provision have been encouraged by the M. of H., and for this purpose one or other of the methods already described (see *ante*, p. 20) may be followed. [54]

(2) *Under the Isolation Hospitals Acts.*—The interest of county councils in the provision of hospitals for infectious disease has been recognised by affording them special powers, which preceded their general power to provide hospitals, and by placing upon them a special duty to unravel the confusion which has arisen in some counties from the existence of a multiplicity of small isolation hospitals under the independent and exclusive management of separate small authorities. For instance, under sect. 8 of the Isolation Hospitals Act, 1898 (l), a county council may provide or cause to be provided a hospital for the reception of patients suffering from infectious disease on the application of one or more sanitary authorities, parish councils or parish meetings within the county, or of twenty-five ratepayers of a contributory place (m), or as the result of inquiry and report by the county M.O.H. (n). After a local inquiry, the county council may, by order, establish a hospital district and form an isolation hospital committee for the management of the hospital, the constitution of which depends upon the decision of that council whether or no to contribute to the cost of the hospital. A committee set up in this way have powers similar to those of a joint board (see *ante*, p. 20), save that the power to borrow money is reserved to the county council (o), and the latter exercise a general control over the activities of the committee (p). The expenses of the committee, except "patients' expenses" and "special patients' expenses," are defrayed from a common fund (q), the county council being allowed to contribute from the county fund to the "structural" and "establishment expenses," if they think fit (r). A sanitary authority or a joint hospital board may also transfer an existing hospital

(i) A port sanitary authority deal with cases of any epidemic or acute infectious disease except tuberculosis or venereal disease (see ss. 2, 8 of the Port Sanitary Regulations, 1938, already mentioned).

(k) M. of H. Memo. Hosp./2, on the Provision of Isolation Hospital Accommodation printed at p. 3189 of Lumley's Public Health, 10th ed.

(l) 18 Statutes 862.

(m) Isolation Hospitals Act, 1898, s. 4; 18 Statutes 862.

(n) *Ibid.*, s. 6.

(o) *Ibid.*, s. 22; 18 Statutes 868.

(p) *Ibid.*, s. 18.

(q) *Ibid.*, ss. 10, 11.

(r) *Ibid.*, s. 21.

to the county council for use as an isolation hospital, if the Minister consents, and the above conditions as to its management then apply (s), or a county council may contribute toward the cost of an isolation hospital provided by a sanitary authority or joint board whether within the county or not (t). County councils have therefore had powers and obligations in relation to isolation hospital provision in advance of those conferred upon them by sect. 14 of the L.G.A., 1929 (u), but their initiative has been limited. It should be noted that hospitals provided under the Isolation Hospitals Acts may provide accommodation of an exceptional character for persons undertaking to pay for the same and the patients need not be resident in the hospital district (v). The diseases treated are those to which the Infectious Disease (Notification) Act, 1889, applies, but the county council may by order extend the provisions of the Act to any other infectious disease (w).

(8) *Survey of Hospital Accommodation*.—By sect. 63 of L.G.A., 1929 (a), a duty has been imposed upon county councils of making a survey of the hospital accommodation for infectious disease provided by the county council and the councils of non-county boroughs and districts in the county and submitting to the Minister a scheme for the provision of adequate accommodation within the county. Further, the Minister may himself, in default of a county council, prepare such a scheme, and he may also transfer the responsibility for the provision of hospital accommodation for infectious disease from a non-county borough or district council to the county council, if the former fail to implement their duties under an approved scheme. The duty of a county council under sect. 63 of the Act of 1929, relates to all infectious disease except tuberculosis or venereal disease (b). The Minister may, however, make regulations authorising a particular county council, with their consent, to provide or arrange for hospital treatment for any infectious diseases defined in the regulations (c). [55]

Hospital Treatment of Venereal Diseases.—The treatment in hospital of these diseases is permitted under the general law governing the provision of hospitals by any local authority (see *ante*, p. 19), but arrangements have usually been made by county and county borough councils under special schemes inaugurated before the discontinuance of specific Government grants (d). These bodies have the duty of submitting schemes to the M. of H. under the P.H. (Venereal Diseases) Regulations, 1916 (e), including treatment in hospitals. The diseases to which these schemes extend are syphilis, gonorrhoea and soft chancre, and the Minister has usually recognised only such arrangements as are required for their treatment at a stage when they are still communicable to other persons, although this limitation is not imposed by the regulations. A scheme may provide for treatment by arrangement with the managers of any voluntary hospital, and contracts of this kind have been encouraged by the Ministry, partly because there may be less

(s) Isolation Hospitals Act, 1901, s. 1; 13 Statutes 688.

(t) *Ibid.*, s. 2.

(u) 10 Statutes 891.

(v) Isolation Hospitals Act, 1893, s. 16; 13 Statutes 806.

(w) *Ibid.*, 869.

(a) 10 Statutes 925.

(b) L.G.A., 1929, s. 63 (7); 10 Statutes 926.

(c) P.H. (Prevention and Treatment of Disease) Act, 1913 s. 2 (13 Statutes 953), and P.H.A., 1925, s. 61 (18 Statutes 1141).

(d) L.G.A., 1929, s. 85; 10 Statutes 937.

(e) S.R. & O., 1916, No. 467, see p. 3751 of Lumley's Public Health, 10th ed.

reluctance on the part of patients to enter institutions not recognised as being specially intended for the treatment of venereal disease. The same object may be attained by admission to a general hospital under the direct management of the authority. All information obtained in regard to a person treated under a scheme must be regarded as confidential (f), and therefore the names of patients may not be transmitted to the local authority providing the treatment or to any other authority for the purpose of recovering the cost. Accordingly, an exception is made for venereal disease, treated under the regulations, to the general rule that a council may extend hospital facilities only to inhabitants of their area. The discontinuance of *ad hoc* grants has not relieved the Minister of his responsibility for approving modifications of venereal disease schemes, but he has issued a general sanction for the extension of existing facilities at approved institutions (g). The qualifications of officers employed at such institutions are prescribed (h). [56]

Hospitals and Convalescent Homes for Children.—Local authorities may establish or contract for the use of such institutions under their general powers in relation to hospital provision (see *ante*, p. 18). A county council, borough or district council may also take any action permissible to a sanitary authority under the P.H.As. for the care of young children, including arrangements for institutional treatment (i). Further, it is possible for any such council, being a maternity and child welfare authority, to make similar arrangements for children who have not yet reached school age, under sect. 1 of the Maternity and Child Welfare Act, 1918 (k), if the Minister approves. It has been customary to provide treatment in isolation hospitals, or elsewhere, for cases of diarrhoea and measles occurring among children under school age and to charge the cost to the maternity and child welfare account, but since the discontinuance of *ad hoc* Government grants (l) the practice does not appear to serve any useful purpose, except in districts where hospitals have been provided only under the Isolation Hospitals Acts (see *ante*, p. 23). As institutional provision may be made either under the Notification of Births (Extension) Act, 1915, or the P.H.As., new developments may be undertaken without the Minister's sanction, unless it is proposed to borrow for the purpose (m). [57]

Lying-in Hospitals and Convalescent Homes.—Such institutions may be provided by any county council, or county borough council under their general power to arrange for hospital treatment (see *ante*, p. 20), a maternity home or hospital being in the same category as "a place for the reception of the sick" (n). Such institutional treatment may also be afforded under the Notification of Births and Maternity and Child Welfare Acts, in which case the conditions mentioned in relation to institutions for children apply (*supra*). [58]

Poor Law Establishments.—Institutional treatment of the sick is afforded under the Poor Law Act, 1930, in two main types of establishments.

- (f) Regulations of 1916, s. 2 (2).
- (g) M. of H. Circular 1072 of February 12, 1920, printed at p. 3540 of Lumley's Public Health.
- (h) S.R. & O., 1930, No. 69, ss. 4, 5.
- (i) Notification of Births (Extension) Act, 1915, s. 2; 15 Statutes 767.
- (k) 11 Statutes 742.
- (l) L.G.A., 1929, s. 85; 10 Statutes 937.
- (m) M. of H. Circular 1072, mentioned in note (g), *ante*.
- (n) L.G.A., 1929, s. 14 (2); 10 Statutes 891.

lishment, respectively called hospitals (or infirmaries) and institutions, the former being separate establishments, recognised by the Minister, for sick persons or for maternity treatment, the latter being any establishment for the reception of the poor, other than a hospital, a children's home or a separate casual ward (*o*). Institutions are commonly described as "mixed," where more than one of these classes is received therein. The sick and maternity cases in mixed institutions are housed in what are officially designated as sick wards (*p*). All poor law establishments for the reception or relief of the poor are referred to in the Act of 1930 as workhouses (*q*), and the provision of a new institution by the council of a county or county borough, as the poor law authority, is contingent upon a direction given by the Minister in each instance (*r*). Such a direction can be given only with the consent of the council concerned, and the initiative is usually taken by them. The type and size of establishment to be provided may be specified. Improvements of an existing establishment may be made by the council without the consent of the Minister, if the cost does not exceed £1,000 or involve a loan (*s*), but the Minister may, without the council's consent, call upon them to enlarge or alter such an establishment, or to furnish or equip it to his satisfaction, or to convert some other building in the possession of the council for use as a hospital or institution (*t*). The Minister is responsible for the direction and control of the administration of the establishment (*u*), which he exercises partly by order prescribing the appointment and duties of a house committee, the mode of admission and discharge of patients, their classification, the management of their dietaries, the records to be kept of individual patients, the disciplinary measures which may be taken, and the appointment, qualifications, conditions of service and duties of the officers employed (*a*); and partly through his general inspectors, who have power not only to inspect every establishment but to attend meetings of the councils and their committees or sub-committees held for the relief of the poor (*b*). All matters affecting such an establishment stand referred to the public assistance committee, or the management may be assigned to any other committee of the council (e.g. the public health committee) under the general direction and control of the public assistance committee (*c*). In a county, the visiting, inspection or management of an institution may by the scheme be delegated to a guardians committee, but not the appointment or dismissal of any officer (*d*).

Poor law authorities, whether councils of counties or county boroughs, may be combined for hospital or institutional purposes by an order of the Minister under sect. 3 of the Act (*e*), either at their own request or, after local inquiry, without their consent if the Minister considers that a combination would be financially or otherwise to the public or local advantage. A joint committee may thus be constituted

(*o*) Public Assistance Order, 1930, s. 6; 12 Statutes 1053.

(*p*) *Ibid.*

(*q*) Poor Law Act, 1930, s. 163; 12 Statutes 1047.

(*r*) *Ibid.*, s. 21; *ibid.*, 981.

(*s*) Public Assistance Order, s. 14; 12 Statutes 1056.

(*t*) Poor Law Act, 1930, s. 22; 12 Statutes 981.

(*u*) *Ibid.*, s. 1; *ibid.*, 968.

(*a*) Public Assistance Order, 1930; 12 Statutes 1053.

(*b*) Poor Law Act, 1930, s. 9; 12 Statutes 974.

(*c*) *Ibid.*, s. 4 (2), (4).

(*d*) *Ibid.*, s. 5 (3).

(*e*) 12 Statutes 969.

with a degree of independence comparable to that of a joint hospital board (see *ante*, p. 20). Over and above the general power to contribute to voluntary hospitals (*ante*, p. 19), annual subscriptions to any public institutions may be made by county and county borough councils with the Minister's consent if facilities are afforded at them for the treatment of persons in receipt of relief (f). [59]

Hospital Co-ordination. *Public Health and Poor Law.*—An administrative scheme of a county or county borough council for the discharge of poor law functions (g) may promote unification of hospital or institutional provision by one or more of several methods. The council may make a declaration that such provision will not in future be made under the poor law, but exclusively in virtue of the powers contained in (*inter alia*) the P.H.A., 1875, the L.G.A., 1888, or the Maternity and Child Welfare Act, 1918, or the P.H. (Tuberculosis) Act, 1921 (h). By this means, a council can ensure that their hospital responsibilities will be exercised entirely through the public health committee or some committee with similar functions, but debar themselves from treating any sick indoor patient under the poor law. Short of such a sweeping transfer, a council may assign poor law functions, whether related to the treatment of the sick or not (e.g. the management of a mixed institution), to a committee already having institutional responsibilities, to be discharged under the general supervision and control of the public assistance committee (see *ante*, p. 26). The method most commonly used, however, and one which is an almost inevitable consequence of a declaration relating to the general treatment of the sick, is to appropriate under sect. 163 of L.G.A., 1933 (i), a former poor law establishment to the purposes of any Act under which treatment of the sick may be afforded. Lastly, some co-ordination is effected through the person of the M.O.H., who is adviser of the public assistance committee on all matters relating to public health or other medical questions (k). [60]

Between Local Authorities.—This question has already been discussed in connection with hospitals jointly provided or used (*ante*, p. 20), but special problems have been created by the transfer of poor law functions to county and county borough councils. Since the old poor law unions rarely coincided with a county borough or county, a transferred establishment may continue to serve the common needs of the councils of a county borough and a county. This may be regularised by the statutory means of combination allowed by sect. 113 (2) of L.G.A., 1929 (l), or sect. 3 of the Poor Law Act, 1930 (m). The Ministry have suggested that "It may well be that these arrangements will more generally be made by vesting the ownership of an institution in one council, subject to an agreement to receive, by the reservation of a specified number of beds or otherwise, suitable cases chargeable to other councils" (n). [61]

Between Local Authorities and Voluntary Hospital Bodies.—In making hospital provision in connection with transferred poor law functions, a county or county borough council must consult representatives of the governing bodies and the medical staffs of the voluntary

(f) Poor Law Act, 1930, s. 67; 12 Statutes 1901.

(g) L.G.A., 1929, ss. 4, 131; 10 Statutes 885, 969.

(h) *Ibid.*, s. 5; *ibid.*, 885.

(i) 26 Statutes 396.

(k) Public Assistance Order, 1930, s. 165; 12 Statutes 1078.

(l) 10 Statutes 953.

(m) 12 Statutes 969.

(n) M. of H., Memo. L.G.A. 1 of April 17, 1929, para. iii., 22.

hospitals in their area—commonly called the voluntary hospitals committee—as to the accommodation to be provided and its use (*o*). While the duty of holding such consultation would appear to be obligatory only in relation to the provision of accommodation not hitherto in being, and there is no obligation upon an authority to comply with the views of the voluntary hospitals committee, the Ministry have expressed the hope that the procedure will lead to wider arrangements for avoiding wasteful competition between public and voluntary bodies and for the fullest consultation with the medical profession (*p*). [62]

Recovery of Maintenance.—A council may recover the cost of maintaining in a hospital, or place for the reception of sick persons, any patient sent there under the P.H.As., who is not in receipt of poor relief (*q*). Further, it is the duty of every county council, borough or district council to recover from any patient who has received institutional treatment at the authority's expense for any disease which is not infectious (or from a person legally liable for his maintenance), the cost of his maintenance to the extent of his capacity to pay (*r*). The term "infectious disease," in this connection, is not defined, but it does not appear to be limited, as in some definitions, to diseases notifiable by reason of the Infectious Disease (Notification) Act, 1889, or of regulations of the M. of H. The persons liable for maintenance are not indicated in sect. 16 of the Act of 1929, but the Minister has been advised that the range of relatives so responsible is as wide as that enumerated in the Poor Law Act, 1930 (*s*). The cost of maintenance is to be deemed, in respect of each day of maintenance, to be a sum representing the average daily cost per patient of the maintenance of the institution and its staff, and the maintenance and treatment of the patients therein (*t*). [68]

In this connection, a central register of all persons receiving any form of public assistance may be useful, and it may be convenient and economical to ascertain the means of recipients of assistance and to collect payments through one department, irrespective of the statutory authority under which the assistance has been granted (*u*). In this connection, however, the possibility of combining the collection of contributions with the other duties of hospital almoners should be considered.

The cost of hospital or institutional treatment under the poor law is recoverable from the patient himself if he is possessed of means (*a*), or a maintenance order on his relatives may be obtained (*b*). Difficulties have arisen, however, in recovering relief where there has been no contract to repay it (*c*), but these may be surmounted by granting institutional relief in the form of a loan (*d*), the fact that relief is so granted being made known in writing to the recipient at the time of the grant of such relief. (See titles INSTITUTIONAL RELIEF and PUBLIC ASSISTANCE.) [64]

(*o*) L.G.A., 1929, s. 13; 10 Statutes 891, and Poor Law Act, 1930, s. 8; 12 Statutes 973.

(*p*) M. of H. Circular 1,000 of April 10, 1929, pars. 70—81.

(*q*) P.H.A., 1875, s. 132; 13 Statutes 679.

(*r*) L.G.A., 1929, s. 16; 10 Statutes 893.

(*s*) Fifteenth Annual Report of the M. of H., 1933-34, p. 50.

(*t*) L.G.A., 1929, s. 16 (2); 10 Statutes 893.

(*u*) M. of H. Memo., L.G.A. 3, p. 4.

(*a*) Poor Law Act, 1930, s. 20 12 Statutes 980.

(*b*) *Ibid.*, ss. 14, 19.

(*c*) *Pontypridd Union v. Drew*, [1927] 1 K. B. 214; 37 Digest 229, 214.

(*d*) Poor Law Act, 1930, ss. 49, 51; 12 Statutes 992, 993.

Out-Patient Departments.—Authorities have power to afford out-patient treatment at hospitals or institutions under the enactments relating to the provision of hospitals or places for the sick. (See *ante*, p. 18, and titles CLINICS and DISPENSARIES.) [65]

Ambulances.—For the power of authorities to provide ambulances for infectious patients or for cases of accident, see title AMBULANCES. County and county borough councils may also incur reasonable expenses in the conveyance to or from an institution of any person chargeable under the poor law (*e*), and if necessary an ambulance may be provided under this power. The Minister has drawn the attention of authorities to the importance of reciprocal arrangements so that no patient may have to be transferred from one ambulance to another on the way to hospital (*f*). [66]

Acquisition of Land.—Land for the purpose of a hospital, including buildings, may be acquired by purchase, lease or exchange, either within or without the area of the authority (*g*), and a compulsory acquisition may be authorised by a provisional order of the Minister (*h*). The power to acquire land or buildings includes a power to accept a gift (*i*), but if a charitable institution is transferred by way of gift or sale to an authority, the sanction of the Charity Commissioners must be obtained.

The power of a joint hospital board or port sanitary authority to acquire land will not be derived from the L.G.A., 1933, but from the order constituting the joint board or authority.

In acquiring land for a hospital, the terms of any lease should be carefully studied by the authority in order to avoid litigation by reason of the existence of restrictive covenants. Ratepayers may also allege that the establishment of a new hospital (*e.g.* for smallpox) may cause a nuisance, so that a contract for the purchase of the site, or for the erection of buildings, should not be made until any opposition to the proposal has been carefully examined (*k*), and a sanction has been given by the Minister to any loan proposed. [67]

Borrowing.—If, as is usual, an authority desire to provide and equip a hospital out of the proceeds of a loan (*l*), a sanction to borrow the money must be obtained from the M. of H. (*m*). In addition, therefore, to his power to approve of proposals under certain of the Acts or regulations already mentioned, the Minister is able to exercise control over the hospital schemes of authorities who desire to borrow. The Minister will not readily sanction loans for buildings of a temporary character (*n*). In relation to isolation hospitals, information, which should be submitted along with an application for sanction to borrow, includes a copy of any relevant resolution of the authority, detailed estimates of the cost of the work, maps of the site and its environs, plans of building, information as to the density of population near the

(*e*) Public Assistance Order, 1930, s. 17; 12 Statutes 1056.

(*f*) M. of H. Circular 1856 of November 2, 1933.

(*g*) L.G.A., 1933, s. 157; 26 Statutes 391.

(*h*) *Ibid.*, ss. 159–160.

(*i*) *Ibid.*, s. 268.

(*k*) Lumley's Public Health, 10th ed., pp. 254–6.

(*l*) L.G.A., 1933, s. 195; 26 Statutes 412.

(*m*) *Ibid.*, s. 218; 26 Statutes 424.

(*n*) M. of H. Memo., Hosp./2, of January, 1924.

hospital, proposals as regards water-supply and sewage disposal, and particulars relating to the financial position of the authority (o). Similar particulars are required in connection with hospitals or institutions for non-infectious disease. The Minister may sanction a loan if he is satisfied with the information submitted, but it is usual to hold a public local inquiry (p) at which interested and aggrieved parties may be heard. The officers of the authority should be fully prepared to state, at such an inquiry, the arguments justifying the erection or acquisition of the hospital, but it is desirable that there should be preliminary discussions of the scheme with officers of the Ministry, and particularly with the Medical Department.

The order constituting a joint hospital board or port sanitary authority will probably apply the provisions of the P.H.A., 1875, as to borrowing, though a power of borrowing is given by sect. 244 of that Act (q). [68]

London.—See title HOSPITAL SERVICES (LONDON).

(o) M. of H., Memo., printed at p. 3143 of Lumley's Public Health.

(p) L.G.A., 1933, s. 290; 26 Statutes 459.

(q) 13 Statutes 727.

HOSPITAL SERVICES (LONDON)

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See also titles :

AMBULANCES ;
BIRTH CONTROL ;
HOSPITALS ;
MATERNITY AND CHILD WELFARE ;
PUBLIC ASSISTANCE IN LONDON ;

TUBERCULOSIS ;
VENEREAL DISEASES ;
VOLUNTARY HOSPITALS AND INSTITUTIONS.

Introduction.—The Metropolitan Poor Act, 1867 (a), provided for the establishment of dispensaries and of asylums for the sick, insane or infirm, or other classes of the poor chargeable to London parishes or unions. The metropolitan infirmaries were gradually established by the unions and parishes, working separately or in groups. This

(a) 30 & 31 Vict., c. 6.

allowed for separate treatment of the sick and also provided for the employment of paid and qualified nurses. Side by side with the development of municipal hospitals was the development of the voluntary hospitals. Among the London voluntary general hospitals which survived the dissolution of the monasteries, were a few of the ancient foundations such as St. Bartholomew's and St. Thomas's. In the eighteenth century these were supplemented by the foundation of Westminster (1719), Guy's (1725), St. George's (1738), the London (1740), and Middlesex (1745). The great teaching schools, which are each associated with one or other of the voluntary hospitals, constitute the medical schools of the University of London.

The Metropolitan Asylums Board was established by an order of the Poor Law Board, pursuant to the Metropolitan Poor Act, 1867, which was consolidated in the Poor Law Act, 1927 (*b*). The Board had the powers of a poor law authority under the Act of 1927 (see Part VI.) and acted for a district formed by the combination of all the poor law unions in London for the purposes mentioned in sect. 160 of the Act, namely "the provision of asylums for the reception and relief of sick, insane or infirm or any class or classes of poor persons in receipt of relief." The Board was in existence for sixty-three years and its duties were steadily added to, both by Acts of Parliament and by administrative orders of the Local Government Board and M. of H. By 1929 the Board was carrying out the duties of providing and managing hospitals and other institutions for: (a) infectious diseases; (b) tuberculosis; (c) children suffering from specified contagious diseases and those requiring special treatment in general hospitals or convalescent homes; (d) mental defectives and epileptics; (e) boys for training for sea service; and (f) casual poor; and they also provided (g) ambulance and transport services.

By sect. 1 of the L.G.A., 1929 (*c*), the Board was abolished, as well as the boards of guardians, and their functions were transferred to the L.C.C. Sect. 18 (*e*) (*d*) provides in particular that the functions of the Board under the P.H. (London) Act, 1891 (*e*), and sect. 42 of the Divided Parishes and Poor Law Amendment Act, 1876 (*f*), shall be transferred to the L.C.C. The functions under the Act of 1876 related to the recovery of charges against patients admitted in cases of emergency and not being paupers; those under the Act of 1891, so far as they concerned hospitals, related to powers to provide landing places, vessels and ambulances and the reception of non-pauper fever and smallpox patients, and the reception into hospitals in the metropolitan district of children from schools outside London. [69]

Present London Authorities and their Powers.—In addition to these transferred functions, the L.C.C. have power conferred by sect. 14 of the L.G.A., 1929 (*g*), under sect. 131 of the P.H.A., 1875 (*h*), as amended by sect. 64 of the P.H.A., 1925 (*i*), to provide places for the reception of the sick and for the reception of pregnant women. Under the Metropolitan Ambulances Act, 1909 (*j*), the L.C.C. have power to establish an ambulance service for accidents or illness (other than infectious diseases). Sect. 15 of the L.C.C. (General Powers) Act,

(b) 17 & 18 Geo. 5, c. 14.

(d) *Ibid.*, 895.

(f) 12 Statutes 948.

(h) 13 Statutes 678.

(i) *Ibid.*, 1143.

(c) 10 Statutes 883.

(e) 11 Statutes 1025.

(g) 10 Statutes 891.

(j) 11 Statutes 1207.

1918 (*k*), gave power to the L.C.C. and other local authorities in London, to enter into agreements as to the use of the ambulance service provided under the Act of 1909. Sect. 28 of the L.C.C. (General Powers) Act, 1928 (*l*), enables petty sessional courts, on the application of a medical officer, and on his written certificate that such removal is necessary to prevent injury to health of or serious nuisance to other persons, to remove to an institution persons who are aged or infirm and residing in insanitary premises, or persons suffering from grave chronic diseases. Sect. 58 of the L.C.C. (General Powers) Act, 1934 (*m*), contains provisions enabling the council to recover from patients the cost of their maintenance in any of its institutions. In addition to the powers above-mentioned, the L.C.C. have the powers of a poor law authority, and under Part V. of the Poor Law Act, 1930 (*n*), these powers are more particularly defined. They relate to the provision of institutions for sick, insane and infirm poor persons, and the provision of dispensaries and medical outdoor relief (see title PUBLIC ASSISTANCE IN LONDON).

The City corporation and the metropolitan borough councils are sanitary authorities for the purposes of the P.H. (London) Act, 1891, and by virtue of sects. 75 to 78 thereof (*o*) these bodies have the power to provide hospital accommodation either by building hospitals or by agreements with hospital authorities, and may recover the cost of non-infectious and non-pauper patients; may provide temporary supplies of medicine and medical assistance for the poorer inhabitants of their districts; and may provide conveyances for infected persons.

The L.C.C. are now the primary hospital authority in London. The City and metropolitan borough councils do not, in fact, provide general or isolation hospitals and they utilise their powers under the 1891 Act chiefly by the provision of clinics for such purposes as artificial light treatment, massage, orthopaedic and ophthalmic cases, diphtheria prevention, x-rays, and ear complaints. As authorities for maternity and child welfare they do, however, provide institutions including maternity homes and ante-natal and other clinics. (See below and title MATERNITY AND CHILD WELFARE.) These authorities also provide tuberculosis dispensaries under a scheme made by the L.C.C. under the P.H. (Tuberculosis) Act, 1921 (*p*) (see below and title TUBERCULOSIS). [70]

Administration of L.C.C. Hospital Services.—By virtue of sect. 19 of the L.C.C. (General Powers) Act, 1934 (*q*), the L.C.C. have appointed a Hospitals and Medical Services Committee, and the section gives power to delegate without restrictions, and enables the council to appoint to the committee non-members of the council. Non-members of the council may also be appointed on sub-committees (see title PUBLIC HEALTH AND HOUSING COMMITTEES).

The committee has three sub-committees charged respectively with duties as to hospital management, staff, and hospital planning and development. In addition a local sub-committee is appointed for each institution to deal with domestic matters. These local committees meet at the respective institutions.

Sect. 122 of the Poor Law Act, 1930 (*r*), enables the L.C.C. to appoint

(*k*) 11 Statutes 1821.

(*m*) 27 Statutes 429.

(*o*) 11 Statutes 1070, 1071.

(*q*) 27 Statutes 411.

(*l*) 11 Statutes 1410.

(*n*) 12 Statutes 1082.

(*p*) 18 Statutes 971.

(*r*) 12 Statutes 1032.

a Public Assistance Committee for the purpose of carrying out the functions of the Act. (See title PUBLIC ASSISTANCE IN LONDON.) Under a scheme made under Part I. of the L.G.A., 1929 (s), the council declared its intention that, as soon as circumstances permitted, certain services which could be provided by way of relief should be provided exclusively as a public health rather than as a poor law function. The council has thus been faced with the duty of not only assimilating the transferred services, but also gradually reconstructing them, so far as possible, as public health services. The diversity of the institutions in their equipment, staffing and methods of administration has made this task exceedingly difficult. [71]

The existence of independent administrations, apart from the recognised hospital services such as that of the Metropolitan Asylums Board and the great voluntary hospitals, had led to overlapping and duplication. What is true of medical and surgical work is also true of such complex and expensive organisations as pathological, bacteriological, biochemical, radiological, electrical and massage departments, and other special departments such as those for eye, ear, nose and throat, and similar work. The abolition of the poor law boundaries and the treatment of the administrative county of London as a whole afforded a great opportunity for so rearranging and regrouping the hospitals and institutions that they could be used to the maximum degree of efficiency. At the same time, due regard had to be paid to all other facilities, public and voluntary, in London for the treatment of the sick, the aim being to find the best scheme for the prevention and treatment of disease among the people of London. The following are the three most important factors to be considered in this connection : (1) the classification of the patients in the various hospitals; (2) the segregation of suitable cases in selected institutions; and (3) the increasing demand for hospital accommodation for the (so-called) middle classes.

Since the transfer the council has carried out a number of schemes for the improvement of the existing hospitals and for the provision of further accommodation, and many other such schemes are proceeding or contemplated, but there is obviously much to be done before the council can rest satisfied that the maximum of efficiency has been secured. [72]

General Hospitals.—The hospitals and medical services committee, under the administrative scheme above-mentioned, administers all hospitals for the general sick. These are assigned to the care of the general hospitals section of the county council's public health department (as distinct from the special hospitals section). Of the former poor law institutions which have been transferred, 29 poor law hospitals and two colonies for sane epileptics have been allocated to the general hospitals section of the public health department. In addition there have been assigned to this section 12 mixed institutions (i.e. containing both sick and healthy inmates) for the treatment of the chronic sick. One of the institutions has now been merged into a general hospital, making 11 such mixed institutions in all. The remaining 14 mixed institutions were allocated to the public assistance committee. Medical care and treatment of all sick patients whether in mixed institutions or otherwise is the duty of the county M.O.H. Two hospitals have been acquired since 1930 as convalescent institutions.

(s) 10 Statutes 883.

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The work of the general hospitals division thus embraces the management of 29 hospitals for acute diseases (including 1 children's hospital), 11 hospitals and institutions for chronic sick patients, 2 convalescent hospitals, and 2 colonies for sane epileptics; that is to say, 44 hospitals and institutions which at the end of 1932 contained a total accommodation of 27,925 beds.

Provision is also made, in separate establishments, for pathological and bacteriological work, the manufacture of antitoxins, and research work. [78]

Under the powers of the P.H.A., 1875, as conferred by sect. 14 of the L.G.A., 1929 (i), twenty-eight hospitals have now been appropriated for the general sick of the county, enabling patients to be treated as sick patients and not as recipients of public assistance. In making a division between those patients who should be allocated to the public assistance service of the council and those who should be allocated to non-poor law services, the general principle has been that inmates to whom the primary approach should be medical should be allocated to the public health service, and those who are in need of assistance because of destitution and are not medical cases, should be allocated to the public assistance department. Hence, a certain number of persons in institutions who require some medical care but are able to move about, fall within the sphere of the public assistance committee, together with able-bodied or healthy persons, but the chronic sick who require continuous medical attention, mental patients, sick children and healthy infants separated from their parents, are allocated to the public health department. [74]

Special Units.—In certain of the general hospitals there have been developed special units for branches of medical and surgical work which are so specialised that it is not convenient or economical to establish a unit for them at every hospital. Special units are established from time to time for research work in the treatment of certain diseases. The reasons for the establishment of special units may be summarised as follows:

- (a) the importance of having medical, nursing, and other staff who possess adequate specialised experience which they could not acquire unless patients of one type were concentrated in one hospital instead of being scattered throughout a number of hospitals;
- (b) the need for special equipment, provision of which in a number of hospitals would be costly and even extravagant;
- (c) the great advantage to research work of having cases under investigation collected in one hospital; and
- (d) the convenience of specialists and consultants who may be associated with the work.

At the present time it is not possible to say which of the special units may become permanently established or which may prove to be only temporary. The branches of work undertaken by these units include plastic surgery, radium therapy, anti-rheumatic therapy, thoracic surgery, investigation and treatment of thyroid diseases, etc. [75]

Out-patient Treatment.—In continuing the practice of certain of the boards of guardians of providing facilities for examination and

treatment of out-patients, the council classify in the following categories the out-patients to be treated at their hospitals :

- (a) Casualties, accidents and other emergencies and patients referred by their medical attendants or applying on their own initiative for treatment as regards any initial treatment, and thereafter only if the medical superintendent is satisfied that they cannot be adequately treated by their own doctor or by a district medical officer, and the almoner reports to the medical superintendent that they are unable to procure for themselves the treatment necessary.
- (b) Patients referred by their own medical attendants for consultation or special investigation, provided that the almoner reports to the medical superintendent that they cannot obtain for themselves the service necessary.
- (c) Continuation or after-care treatment of former in-patients requiring further treatment after discharge, provided that the medical superintendent is satisfied that it is advisable in the patient's interest that he should continue to receive treatment at the hospital.
- (d) Consultation concerning and treatment of patients referred by any duly authorised medical officer of the council.
- (e) Ante-natal and post-natal examination and treatment.
- (f) Patients entitled to outdoor medical relief.
- (g) Special examination and/or treatment of cases or classes of cases authorised by the medical officer of health.

The council have a uniform scale of charges for out-patients. There is no charge, however, for first attendances, except for x-ray examination or for attendances by former in-patients for inspection. As stated below, no charge is made at ante-natal and post-natal clinics.

There are organised out-patient departments at eleven general hospitals, and ante-natal clinics at the twenty-three general hospitals with maternity wards. Special facilities are also available at selected hospitals for certain classes of out-patients. At Mile End, St. Charles's and St. Mary's (Islington) hospitals, special arrangements are made for psychiatric treatment of out-patients, and treatment is provided at a number of hospitals for out-patients suffering from diabetes, and at New End hospital for those suffering from thyroid diseases. [76]

Staff.—As part of the work of co-ordinating transferred institutions, the council have reorganised the medical, nursing and other staff in all their hospitals. Scales of salaries and conditions of service have been laid down for the medical service as a whole. The staff employed in the hospitals service comprises about 20,900 (including 540 medical staff and 9,800 nurses). The council have accepted in principle the system of an adequately remunerated whole-time medical staff, exercising full responsibility, with a reserve of consultants for advice or operation in cases of special difficulty. A uniform service of consultants for general hospitals has been established on a part-time basis at a fixed scale of salary per annum, according to the number of weekly sessions. [77]

Co-ordination of Voluntary Hospitals.—The council has approved a scheme of voluntary hospital representation for the purposes of sect. 13 of the L.G.A., 1929 (u), which requires local authorities when making

(u) 10 Statutes 801.

provision for hospital accommodation to consult a committee representative of governing bodies of voluntary hospitals. A London Voluntary Hospitals Committee has, as a result, been set up, comprising the representation above-mentioned and representatives of the council and of the M. of H. A joint survey of all the medical services in London, voluntary and municipal, has been published. Collaboration with voluntary hospitals has also taken place in the field of medical education. A scheme has been made for the association of certain of the council's general hospitals with the medical schools of the voluntary hospitals to enable students to obtain part of their training in the council's hospitals.

The council took an important part in the establishment of the British Postgraduate Medical School at Hammersmith by undertaking the cost of the School and the necessary building and engineering works, and in addition carrying out at the council's cost to an amount of £100,000 developments and adaptations of the Hammersmith hospital with which the School is associated. The School is now one of the Medical Schools of the University of London. [78]

District Medical Service.—This service is strictly a poor law function taken over by the L.C.C. under the L.G.A., 1929. Altogether there were 126 "medical relief" districts in the county, each with a district medical officer most of whom were part-time general practitioners. In connection with the service there were in 1929 forty-one district dispensaries in many of which medicines were supplied on the medical officer's prescription. In view of the fact that the P.H.As. do not contain any general powers for the domiciliary medical attendance of the sick, the powers under which this service is continued depend on the council's powers as a poor law authority. By virtue of the council's administrative scheme made under the Act of 1929, the hospitals and medical services committee exercises the transferred functions relating to the provision of local medical services, the consideration and supervision of the medical arrangements for this service being thus associated with the other medical services of the council. A considerable amount of co-ordination has been undertaken with a view to obtaining greater convenience and uniformity, the number of medical relief districts having been reduced to 106, and steps have been taken with a view to securing co-operation between the medical superintendents of the appropriate hospitals and the local district medical officers by permitting the supervision by the superintendent of the work of the medical officers. The supply of medicines at dispensaries has been discontinued in some instances and the supply by chemists has been extended. [79]

District Nursing Services.—This also was a poor law function transferred to the L.C.C. Before 1929 the Central Council for District Nursing in London, which is the representative body for the principal nursing organisations, was in receipt of grants of varying amounts from boards of guardians. By a provisional scheme of 1932 a larger payment is made by the county council under their poor law powers to the central council, and this payment is distributed to the district associations. The amounts so allocated are related to the work done for the council's patients, but account is also taken of patients who but for such assistance would have become rate-aided. [80]

Tuberculosis.—The sanitary authorities in London, *i.e.* the metropolitan borough councils and city corporation, have the duty of receiving

notifications of cases of tuberculosis from medical practitioners and taking preventive action thereon. Local medical officers on receipt of notifications make such inquiries and take such steps as may be necessary for investigating the source of infection and preventing its spread. (See title *INFECTIOUS DISEASES*.) The P.H. (Tuberculosis) Act, 1921, places upon the L.C.C. the duty of making arrangements, in accordance with the scheme approved by the Minister, for the treatment of persons suffering from tuberculosis at dispensaries, sanatoria and other institutions. The scheme of the L.C.C. differs from that of provincial county councils in that in London the provision of dispensaries, with their staffs of qualified tuberculosis officers and visitors, is made by the metropolitan borough councils with the assistance of annual contributions from the county council amounting to approximately 25 per cent. of the approved net expenditure. At present there are 25 borough dispensaries, 9 dispensaries at voluntary hospitals and 1 provided by a voluntary association. The service in each borough is under the administrative supervision of the M.O.H. To prevent the loss of connection between tuberculosis officers of borough councils and the patients which have been sent by them through dispensaries to L.C.C. hospitals, the L.C.C. endeavours to enable tuberculosis officers to have access to their patients in the council's institutions, and in certain instances tuberculosis officers have been appointed as honorary consultants on the staff of hospitals treating tuberculosis.

Patients suffering from tuberculosis are either treated in the council's hospitals or are sent to voluntary sanatoria. Selected cases requiring convalescent treatment are sent to homes at the seaside managed by voluntary agencies.

Much of the success of the council's anti-tuberculosis scheme is due to the wide range of facilities available for treatment, for this enables every type of patient to be given the appropriate form of treatment and allows of a considerable measure of attention to the particular needs of patients, for example, climatic conditions, admission to institutions under the management of a particular religious denomination, or to institutions providing social amenities to which the patient has been accustomed. The council's arrangements for residential treatment of the tuberculous include provision both in the hospitals transferred from the boards of guardians, so far as suitable or capable of being made suitable, and in the institutions (both voluntary and those of the late Metropolitan Asylums Board) provided or utilised under the council's anti-tuberculosis scheme. The whole of the accommodation is graded and there are facilities for the easy interchange of patients between the various types of institution according to the varying condition of the patients. Observation beds for pulmonary and surgical cases are provided in the transferred general hospitals.

Certain measures have been taken by the county council with regard to tuberculous children, in addition to residential treatment. Arrangements have been made for the boarding out of child "contacts" living in heavily infected homes, and of children whose mothers are receiving sanatorium treatment; six open-air day schools have been opened for pulmonary, glandular and abdominal cases to supplement or in substitution for residential treatment; provision is also made through the Invalid Children's Aid Association for surgical appliances for children who have completed a course of residential treatment for tuberculosis of the bones and joints.

With a view to carrying out arrangements for after-care as authorised by the P.H. (Tuberculosis) Act, 1921, the county council and the metropolitan boroughs have co-operated in the formation of Care Committees representative of various public and voluntary organisations. In some boroughs the Care Committees have been constituted as borough committees, linked to the Public Health Committee, and having their clerical work carried out by a staff appointed by the councils whose salaries rank for the L.C.C. grant mentioned above. In some boroughs, handicraft classes have been organised, the cost being met by voluntary funds though the L.C.C. provide trained instructors if required. [81]

Venereal Disease.—Under the P.H. (Venereal Diseases) Regulations, 1916, the L.C.C. have entered into a scheme with the county councils of Buckingham, Essex, Hertford, Kent, Middlesex and Surrey, and the county borough councils of Croydon, East Ham and West Ham. The scheme makes arrangements for the diagnosis, with treatment, of venereal disease, and each council contributes to the cost. Twenty treatment centres exist at voluntary hospitals in London and one centre is administered direct by the L.C.C. Arrangements are made for pathological examinations and for the supply of special medicines to medical practitioners free of cost. The intention of the scheme is to enable treatment to be obtained by any patient irrespective of his place of residence or means. No person is rejected by a treatment centre at a hospital merely because the council of the area where he resides has no agreement with the hospital.

Hospital patients suffering from venereal disease are concentrated in four units with a total of 103 beds for males, and five units with 106 beds for females (including 82 under the special hospitals division). The accommodation for males is almost adequate for the requirements, but the wards for females are always full, and extensions are being provided. [82]

Special Hospitals.—Before 1930 the L.C.C. had no power to provide hospital accommodation for infectious disease. This was a function of the Metropolitan Asylums Board. Originally the Board had power to admit only the sick poor, but later powers were conferred upon them to admit non-pauper patients. Under sect. 80 of the P.H. (London) Act, 1891 (a), the Board were enabled to admit non-pauper patients who were suffering from fever, smallpox or diphtheria, and it was further provided that the admission of a patient suffering from infectious disease into any hospital provided by the Board should not be considered to be parochial relief.

Sect. 85 of the Act (b) also provided that the Board should be a sanitary authority for the prevention of epidemic diseases. The diseases mentioned in the Act were added to at various times by order of the Local Government Board with the result that the Metropolitan Asylums Board became the responsible authority for the treatment of all classes of patients for infectious disease. The whole of the Board's special hospitals were assigned for transfer to the special hospitals division of the council's public health department. The special hospitals division deals with the management of 80 hospitals (containing 18,847 beds), of which 16 are for infectious diseases, including 1 for ophthalmia neonatorum and young children suffering from congenital syphilis, and 1 for women and girls suffering from venereal diseases, with units for post-encephalitis lethargica and radium

(a) 11 Statutes 1071.

(b) *Ibid.*, 1073.

treatment of cancer of the uterus; 9 (and part of another) are for tuberculosis, and include a unit for rheumatism in children; 5 are for children, including 2 for sick children, 1 for children suffering from ringworm and other skin diseases, 1 for children suffering from ophthalmia and interstitial keratitis, and 1 children's seaside convalescent home.

The arrangements in London for the removal to hospital of infectious cases differ from those generally applicable outside London. In London an application to an infectious diseases hospital for the admission of a patient is acceded to, provided that a medical certificate of a qualified medical practitioner is handed to the ambulance nurse. The patient must be certified to be suffering from one or other of the diseases admissible under the regulations of the council to the infectious disease hospital. On occasions of abnormal pressure this procedure may be varied. [83]

The Ambulance Service.—Under the Metropolitan Ambulances Act, 1909 (c), the county council provided ambulances for the conveyance of persons overcome by accident or sudden illness in the streets or other public places, and conveyance was effected to the patient's home or the hospital. Certain cases of emergency occurring at a patient's home were also dealt with. The county council's ambulance service did not operate within the City; the City Corporation maintains its own ambulance service for cases of accident and illness occurring in the streets within the city area. The ambulances of the Metropolitan Asylums Board were primarily for the conveyance of cases of infectious disease; but the ambulances could be hired by private persons and were frequently made use of by the boards of guardians in cases where the guardians had no ambulance of their own, and by the voluntary hospitals. The transfer of poor law functions to the county council gave the council an opportunity to co-ordinate into one central organisation the above-mentioned types of ambulance service. The service formerly provided by the county council under the 1909 Act became the "Accident Section" and the service provided by the Metropolitan Asylums Board became the "General Ambulance Section," and included thirty ambulances taken over from boards of guardians. The River Ambulance Service previously carried on by the Metropolitan Asylums Board has been discontinued.

Within the administrative county the council provide ambulances, free of cost, for the conveyance to:

- (a) hospitals or private residences (except in the City of London) of:
 - (i.) persons meeting with accidents or suffering from sudden illnesses in the streets, public places, places of work, etc.;
 - (ii.) persons meeting with accidents in their homes;
 - (iii.) persons suffering from illnesses in their homes if a doctor certifies that the case is one of life or death, and provided that arrangements have been made for reception of the patient in a hospital;
 - (iv.) parturient women, if the case is one of urgency, whether from the home or place of work or elsewhere, on the application of a qualified doctor or certified midwife, provided that either a doctor or a midwife accompanies the case; and

- (v.) non-urgent cases of parturition on condition (1) that the patient must have in her possession an ambulance card issued by the council, (2) that she is accompanied by a doctor, nurse or female friend, and (3) that she must be wrapped in blankets ready for her removal when the ambulance arrives;
- (b) the council's hospitals for infectious diseases of patients, subject to the fulfilment of certain conditions; and
- (c) the council's hospitals and institutions for non-infectious cases of patients when application is made (i.) through the council's public assistance department, or (ii.) by, or on behalf of, the council's special, general or mental hospitals.

Ambulances and ambulance omnibuses are also provided by the council, when not required for the purposes stated above, on payment of charges as laid down from time to time by the council, for the conveyance of infectious and non-infectious cases between private houses, hospitals (other than the council's hospitals, under the provisions of (a), (b) and (c) above), and nursing homes, and for examinations, consultations and treatment by specialists or at special establishments. The conveyance of private persons between addresses, both of which are outside the administrative county, is not undertaken, except in circumstances of extreme urgency. With a view to facilitating the transport of patients who become ill within the county and whose place of residence is outside the county, or vice versa, arrangements have been made with seventeen neighbouring authorities to provide either that the patient shall be carried to his place of residence by the authority in whose area he resides or that the patient will be conveyed either to or from places outside the county by the county council's ambulances. [84]

Maternity Services.—The L.C.C. are not an authority under the Maternity and Child Welfare Act, 1918. The council, however, provide maternity departments, including midwifery training centres, at general hospitals, and in addition provide accommodation at special hospitals for the reception and isolation of puerperal fever cases. Over 20 per cent. of the total notified births in London take place in the council's maternity wards.

To meet the increased demand, the accommodation has been extended by additional maternity beds or labour beds at Lewisham, Hackney, St. Alfege's, St. James's and St. Nicholas's hospitals. At the end of 1932 the total maternity beds numbered about 700. The number of new cases at ante-natal clinics during that year was 9,448, and the total attendances 48,618. As the attendances are voluntary, and as many of the council's maternity patients are unmarried, the average number of attendances per patient (5.1) is remarkable and shows that the clinics have a valuable educative effect. Few patients allow their attendance to lapse. Arrangements have been made for co-operation with metropolitan borough medical officers in respect of patients intending to enter the county council's hospitals, who are in attendance at borough council clinics (as to which see *post*, p. 41). Each such patient is sent for at least one examination by the medical officer who will supervise her confinement. In order that patients attending ante-natal and post-natal clinics shall not be deterred in any way from receiving the benefit of these valuable services, no charge is made to them.

The council also exercise supervisory duties in connection with maternity services by reason of the fact that they are the local supervising authority under the Midwives Acts, have the duty of inspecting nursing homes, including maternity homes, under the Nursing Homes Registration Act, 1927 (d), and make in pursuance of a scheme made by the Minister of Health under sect. 101 of the L.G.A., 1929 (e), a grant to thirty-seven voluntary hospitals or associations which provide mother and baby homes, and thirteen hospitals and associations providing either district midwifery and maternity nursing or maternity in-patient accommodation. In all these cases inspections are carried out by the council's medical officers.

As mentioned above, the medical services of metropolitan borough councils are mainly in the field of maternity and child welfare. Of the infant welfare centres in London, 89 are provided by local borough councils and 127 by voluntary associations; as regards ante-natal clinics, 55 are provided by local authorities and 64 voluntarily; of the 47 day nurseries in London, 45 are provided voluntarily; and with regard to health visitors, 209 are appointed by local authorities and 124 by voluntary organisations. In some boroughs, municipal midwives are provided and 7 borough councils have provided municipal maternity homes.

With regard to the care of children a certain difference exists between the position in London and that in the provinces. On reaching school age, children pass out of the care of the metropolitan borough councils as child welfare authorities and enter the care of the L.C.C. as local education authority. To avoid any break in the medical care provided, it is the practice in London when children pass to the school medical service, for their medical histories, so far as ascertained by the child welfare authority, to be passed on to the L.C.C. as education authority. [85]

Laboratory and Pathological Service.—Before 1980 the Metropolitan Asylums Board had developed a complete laboratory service capable of dealing with routine examinations in laboratories at its various hospitals, and with the special and more complicated work at group laboratories. Provision was also made in the scheme for the director of research and pathological services to act in a consultative capacity and to carry out autopsies when required. In addition, the Board had established an antitoxin establishment at Sutton, Surrey, to meet the demands of its hospitals for supplies of diphtheria antitoxin and for materials used in connection with diphtheria diagnosis.

The progressive development of the pathological services, which have been made available for the benefit of the patients admitted to the council's hospitals and institutions, is one of the most prominent features of the central administration of the hospital services following their transfer to the council under the L.G.A., 1929. [86]

Dental Treatment.—The facilities for dental treatment in the hospitals transferred from the late metropolitan boards of guardians were generally inadequate. In one or two hospitals complete facilities were provided, but in many practically no dentistry was undertaken, or the dentist was able to do little more than the extraction of aching teeth. The central public health committee of the county council therefore decided that there should be available when required in every

general hospital with a bed accommodation of 500 or over, the services of a dental surgeon for at least two sessions a week; and in every general hospital with fewer than 500 beds, the services of a dental surgeon for at least one session a week, together with equipment and facilities for carrying out necessary dental treatment for patients under treatment in the hospital for other conditions. At six hospitals there was no dental service on a regular basis, and a full-time dental surgeon was therefore appointed in order that the necessary number of sessions could be given. The services of visiting dentists were available at the remaining hospitals. Dental rooms were required and were provided at five of the hospitals which had no dental facilities; at the remaining hospital the dentist was accommodated in a room used by other consultants. Improvements or alternative accommodation were provided at other hospitals as opportunity occurred. In the meantime a standard list of dental equipment was prepared and the equipment of the hospitals was, where necessary, brought up to this specification. Considerable differences also existed in the practice of supplying dentures to patients in hospitals, and this was therefore regularised. In the past dentures were generally supplied by a local dentist or by the hospital visiting dentist, and in some cases provision for this was made in an agreement between the dentist and one of the boards of guardians. It was felt that, in view of the large number of dentures required by the council's services, an arrangement for the central supply of dentures would be desirable. Advantage was therefore taken of facilities available at the plastic surgery unit at Hammer-smith Hospital, for it was found that part of the time of the dental assistant attached to that unit could be used for the manufacture of dentures for other hospitals. The accommodation allowed of the engagement of an additional assistant, who is occupied entirely on the manufacture of dentures for general and special hospitals. Further consideration will be given to arrangements for the provision of dental treatment for public assistance cases through the general hospitals service when the improved facilities are available at all hospitals.

The borough councils provide facilities for dental treatment, open to persons suffering from tuberculosis, expectant and nursing mothers and children under five years of age, in connection with their tuberculosis or maternity and child welfare schemes. Dental clinics are established in some cases, and arrangements with practitioners or hospitals made in others. [87]

Rheumatism, Neurasthenia and Nervous Disorders.—Certain patients suffering from rheumatic diseases are sent to Droitwich for spa treatment.

Patients in need of convalescent treatment for neurasthenia and early nervous disorders are examined at the council's psychiatric clinics, and upon recommendation of consultants are sent to the Lady Chichester Hospital and homes of the Mental After-Care Association. [88]

Conclusion.—Progress is still being made in the work of assimilating and co-ordinating the numerous institutional and other services transferred to the county council by the L.G.A., 1929. The course along which developments must run has been planned, but the speed of progress must obviously be governed by the resources available from time to time. [89]

HOSPITAL STAFF

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See also titles :

HOSPITAL AUTHORITIES ;
HOSPITAL SERVICES (LONDON) ;
ISOLATION HOSPITALS ;

MEDICAL SUPERINTENDENT ;
MENTAL HOSPITALS ;
POOR LAW MEDICAL OFFICER.

NOTE.—The medical and research staff of hospitals are dealt with under the title MEDICAL SUPERINTENDENT.

Appointment and Conditions of Service.—It is the duty of every local authority providing a hospital, other than a poor law establishment (*infra*), to appoint such officers and servants as they think necessary for the efficient discharge of their functions. The rate of remuneration to be paid, so long as it is "reasonable," and the term of office, are decided by the council (*a*). The expression "reasonable" is related to the current rate of salaries or wages obtaining for the type of service given (*b*). The responsibility of a joint hospital board for the appointment, etc., of staff is defined by the provisional order forming the board (*c*). Similarly, an order by a county council constituting an isolation hospital district under the Isolation Hospitals Act, 1893, may include the appointment and control of staff among the matters delegated to the hospital committee (*d*). Officers employed in hospitals by a county, borough or district council, who are entrusted with the custody or control of money, either as cash required for incidental expenses, or as payments collected from patients or their relatives, must supply such regular accounts as the council may require and furnish such security for their conduct as the council consider sufficient (*e*).

In so far as poor law hospitals or mixed institutions (*f*) are concerned, the M. of H. may direct a county council or county borough council to appoint paid officers, and may define their qualifications, duties and rates of remuneration (*g*) and, in default of a council, the Minister may himself make an appointment (*h*). He may remove or

- (a) L.G.A., 1933, ss. 105—107 ; 26 Statutes 361, 362.
(b) *Roberts v. Hopwood*, [1925] A. C. 578 ; 33 Digest 20, 83.
(c) P.H.A., 1875, ss. 279—281 ; 13 Statutes 742, 743.
(d) Isolation Hospitals Act, 1893, s. 10 (2) ; *ibid.*, 864.
(e) L.G.A., 1933, ss. 119, 120 ; 26 Statutes 369, 370.
(f) See *ante*, p. 26.
(g) Poor Law Act, 1930, s. 10 ; 12 Statutes 974.
(h) *Ibid.*, s. 11 ; *ibid.*, 975.

suspend an incompetent or recalcitrant officer of a council (*i*). No person who has been convicted of felony, fraud or perjury may be appointed (*k*). The officers who must be employed at a poor law hospital are a medical superintendent, a matron, a steward and a chaplain, and at a mixed institution a master, a matron, a medical officer, a chaplain and, if there are 100 or more beds for sick inmates, a superintendent nurse (*l*). Further, at an institution which need not have a superintendent nurse, but in which three or more nurses are employed, one of them must be appointed head nurse, and, in any such institution, there must be at least one trained nurse (*m*). Councils may also employ probationer nurses and such other officers and servants as they think necessary (*n*). The qualifications, conditions of service and duties of officers and servants are prescribed in detail (*o*), and reference to these will be made under appropriate sub-headings. [90]

Matron and Superintendent Nurse.—Except at a poor law hospital no special qualification is prescribed for the matron, but she is usually a trained and registered nurse (*post*, p. 46). The matron of a general hospital is in most instances a general trained nurse (see *post*, p. 47), and frequently, in addition, a certified midwife, since she may be called upon to supervise confinements, and the training of pupil midwives as well as nurses. Special experience as assistant matron, or in some other capacity at a hospital, or training in domestic science, is considered by many local authorities as an additional qualification for the post. In large hospitals, where qualified kitchen or domestic superintendents are sometimes employed, the matron, while held responsible for the conduct of all female staff, devotes most of her attention to the strictly nursing functions at the hospital, and a knowledge of domestic science is correspondingly of less importance. While the medical superintendent is usually the chief official of the hospital, the matron reporting through him to the managing committee and the council, she is in practice frequently allowed freedom of action in detailed matters of administration affecting the female staff, and is sometimes asked to attend regularly at the committee's meetings. The matron of a special hospital is usually also a general trained nurse, but, in addition, it is desirable that she should be specially trained in the branch of nursing most appropriate to the hospital.

In the administration of poor law hospitals or institutions, the qualifications for a matron, whose appointment is obligatory (*supra*), depend upon the nature of the establishment. At a hospital she must be a trained nurse and have had at least two years' experience as assistant matron or superintendent nurse or in some similar capacity (*p*). In a mixed institution the matron need not be a trained nurse, her appointment being jointly held with that of the master (*q*), these two officers being usually man and wife. Subject to the general governance and control of the medical superintendent or the master, the matron of any poor law hospital or institution is responsible for the superintendence of the female staff, of the female inmates and of the younger

(i) Poor Law Act, 1930, s. 13; 12 Statutes 976.

(k) *Ibid.*, s. 12.

(l) Public Assistance Order, 1930, Art. 143; 12 Statutes 1075.

(m) *Ibid.*, Arts. 145, 146.

(n) *Ibid.*, Arts. 147—150.

(o) *Ibid.*, Arts. 151—177.

(p) *Ibid.*, Art. 163; 12 Statutes 1077.

(q) *Ibid.*, Art. 156.

boys, and is in charge of the linen, bedding and clothing issued for use; and in a hospital she must also superintend the training of probationer nurses and is also in charge of instruments, technical and domestic appliances (*r*). She must keep a report-book to be submitted at each meeting of the managing committee through the medical superintendent or master and at a hospital must submit half-yearly a special report to the committee in the same manner (*r*). In a mixed institution which carries a superintendent nurse, the latter, who must be a trained nurse (*s*), acts as matron in relation to the nursing staff and the sick wards, being also responsible for the instruction of the assistant and probationer nurses (*t*). A head nurse of an institution, similarly qualified (*u*), is responsible to the medical officer, independently of the matron if the latter is not herself a trained nurse, for the nursing of the sick, and superintends the other nurses in their duties (*a*). This somewhat confusing distribution of responsibilities between the female officers of mixed institutions has caused difficulties in administration, and the council have sometimes found it convenient to appoint a qualified nurse in the dual capacity of matron and superintendent or head nurse. In such circumstances the difficulty arising from the joint appointment of master and matron can be overcome by the exercise by the Minister of his power to sanction departures from the order (*b*).

A matron, or a superintendent nurse at an institution with 100 beds, cannot be dismissed without the consent of the Minister, even during the first year's service (*c*). [91]

Assistant Matron.—Previous experience of the kind required for the appointment of matron (*ante*) is usually demanded for this post. An assistant matron acts as general assistant to the matron in all her nursing and administrative duties. The appointment may be combined with that of home sister and, sometimes, in small hospitals, the assistant matron also acts as sister tutor (*infra*). [92]

Home Sister.—A home sister is in charge of the home in which the nurses reside when off duty, and the domestic arrangements in connection with it. She is usually a trained nurse, and, as she may be called upon to act for the matron or assistant matron (if any), she should have previous experience of the kind required for such posts. [93]

Sister Tutor.—The increased requirements as to the training of nurses (*post*) have led to the appointment in most large hospitals of special instructors called sister tutors, whose whole time is devoted to giving lectures, or coaching probationer nurses in both the theoretical and practical aspects of nursing. These officers should be trained nurses and should have had considerable practical experience of nursing, including appointments as ward sister (*post*) in a general hospital, and also, if they are to be employed in a special hospital, in a hospital of a corresponding kind. Further, they should have special instruction in the training of nurses, such as that conducted by certain educational establishments (*d*), and should also, if possible, hold a certificate of attainment in this branch of nursing (*e*). [94]

(*r*) Public Assistance Order, 1930, Arts. 171 and 176; 12 Statutes 1084, 1086.

(*s*) *Ibid.*, Art. 163.

(*t*) *Ibid.*, Art. 172.

(*u*) *Ibid.*, Art. 168.

(*a*) *Ibid.*, Art. 173.

(*b*) Public Assistance Order, 1930, Art. 8; 12 Statutes 1055.

(*c*) *Ibid.*, Art. 137.

(*d*) *E.g.* The University of Leeds and the Battersea Polytechnic.

(*e*) *E.g.* The Battersea Polytechnic Sister Tutor's Certificate.

Night Sister.—A night sister is responsible for the work of the staff engaged on night duty, and should have had experience as ward sister (*infra*) in the type of hospital at which she is engaged, and also in a general hospital, since emergencies of any kind may arise. In any hospital to which women are admitted as patients, it is desirable that she should be a certified midwife (*f*). [95]

Theatre Sister.—This officer is in charge of the nursing arrangements in an operating theatre. She should be a general trained and registered nurse, with previous experience of work in an operating theatre and also as ward sister, especially in surgical wards. [96]

Ward Sister.—A ward sister is responsible, under the administrative staff, for the care of patients in a ward or group of wards, and for the conduct and practical training of the nurses engaged therein. She should therefore be a registered nurse trained in the branch of nursing appropriate to the hospital, and trained also in general nursing. Further, in any hospital to which women are admitted, one or more of the ward sisters should be certified midwives. [97]

Staff Nurse.—Staff nurses are usually nurses who have completed training and assist the ward or theatre sisters in their duties (*supra*). [98]

Probationer Nurse.—This term is applied to a nurse who has entered a hospital for training but has not yet been registered as a trained nurse (*infra*). She is in one sense an assistant nurse, helping in the general work of the hospital, and also a pupil receiving instruction for a qualification in nursing. [99]

Assistant Nurse or Attendant.—In some establishments, especially poor law hospitals or institutions, the care of the chronic sick and infirm inmates, while entailing much labour, requires little skill and provides limited material for the training of nurses. In wards for inmates of this kind, male or female attendants are employed preferably under the supervision of a trained nurse acting as ward sister (*supra*). No special qualification is required, but a large proportion of the attendants employed at any one time should have had previous experience of the work. [100]

Male Nurse.—In some hospitals or poor law institutions, male nurses are employed, especially for the care of chronic, offensive or degraded types of male patient. They may be probationers training for registration (*infra*), but should be supervised either by a ward sister (*supra*) or by a trained head male nurse. [101]

Training of Nurses.—No person may use the designation "registered nurse" except under conditions prescribed by law (*g*), and the General Nursing Council have made rules as to the conditions under which women may be admitted to a register of trained nurses, as to the training which they must undergo and as to the approval of institutions for such training (*h*). Nurses are required to submit evidence of training over a prescribed period at a hospital or institution which is an approved training school, and to pass preliminary and final examinations, the

(f) Midwives Acts, 1902 to 1926 : 11 Statutes 729, 783.

(g) Nurses Registration Act, 1919, s. 8 ; 11 Statutes 752.

(h) *Ibid.*, s. 3.

latter after reaching twenty-one years of age. The register is divided into parts, one for nurses trained in general hospitals who have passed the appropriate examinations, and supplementary parts for male nurses, mental nurses, nurses for mental defectives, nurses for sick children and fever nurses. In each instance, a nurse must have been trained in an appropriate establishment and have passed examinations related to the special branch of work. The standard period of training is three years, with the exception of fever nurses, for whom it is two years, but reciprocal allowance of one year is given to a nurse already entered on one part of the register who desires to be entered on another. Variation in the length of training is made according to the nature of the school, the above periods applying to institutions which are in themselves complete training schools. At groups of institutions called associated training schools, each institution affording a part of the requisite experience, the length of training is extended by six months. At institutions recognised only for preliminary training, called affiliated schools, probationer nurses having to pass on to a complete school before admission to the final examination, the length of training is increased by one year for general nurses and six months for fever nurses (i). As hospitals and institutions which are recognised training schools are able to attract a better class of nurse than those which offer no prospect of obtaining a qualification, it is to the interest of a local authority to secure that any hospital maintained by them should be approved by the General Nursing Council as a training school. [102]

Superannuation.—The members of a hospital staff may be "designated officers" under a scheme of a local authority (see title SUPERANNUATION), and it is usual for them to be designated. It may be noted, however, that few probationer nurses benefit from such superannuation schemes, since many of them obtain posts at voluntary hospitals after the completion of training. Under the Act of 1922 (k), a nurse, who transfers her service from one authority who have adopted the Act to another who have also adopted it, retains her superannuation rights, but if she obtains employment at a voluntary hospital she forfeits them. Fluidity of nursing staffs as between council and voluntary hospitals, which is desirable, cannot be fostered except by local authorities obtaining power by local Act to be associated with a federated scheme for nurses (l). [103]

London.—See *ante*, p. 35.

(i) General Nursing Council Rules, to be purchased of A. & E. Walter, Ltd., Tabernacle Street, London, E.C.2.

(k) Local Government and other Officers' Superannuation Act, 1922, s. 8; 10 Statutes 866.

(l) The Federated Superannuation Scheme for Nurses and Hospital Officers (Contributory), Registered Office: 1A Henrietta St., Cavendish Square, London, W.1.

HOSPITALS

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See also titles :

AMBULANCES ;
 BACTERIOLOGICAL LABORATORIES ;
 CLINICS ;
 DISPENSARIES ;
 HOSPITAL AUTHORITIES ;
 HOSPITAL SERVICES (LONDON) ;
 HOSPITAL STAFF ;
 ISOLATION HOSPITALS ;

LICENSED HOUSES AND HOSPITALS ;
 MEDICAL SUPERINTENDENT ;
 MENTAL HOSPITALS ;
 PUBLIC HEALTH ;
 TUBERCULOSIS ;
 VENEREAL DISEASES ;
 VOLUNTARY HOSPITALS AND INSTITU-
 TIONS.

Introduction.—According to modern usage a hospital is an establishment specially constructed, staffed and equipped for the medical treatment and nursing of persons who are admitted because they suffer from some physical or mental disease or defect. The essential characteristic of a hospital is that it should provide medical and nursing care, chiefly for in-patients, by specially trained persons for patients who require such services. In this sense, a nursing home might be described as a hospital, and some of the larger nursing homes adopt this designation. The term is usually applied, however, to institutions provided by a public authority, or by a voluntary organisation brought into being to serve a public need and not working for private gain. There is no general definition of the word "hospital" in the law relating to public health and local government, but the alternative description sometimes employed, viz. a place for the reception of the sick (*a*), indicates what is meant. It has been found necessary, however, to extend this description to include institutions for at least one class of persons to whom the term "sick" is not strictly applicable, viz. pregnant women (*b*). The poor law usage of the word hospital is specific, a definite distinction being drawn between a hospital or infirmary and other types of institution provided under the poor law, so that mixed institutions, even if they include sick wards, but do not consist solely of these, are not properly designated hospitals (*c*). The law in relation to the provision of hospitals and similar institutions, the classes of institution provided and the particulars to be sent to the M. of H. if a loan is desired, are described in the title HOSPITAL AUTHORITIES. The present article is concerned with practical ad-

(*a*) P.H.A., 1875, s. 131 ; 13 Statutes 678.

(*b*) L.G.A., 1920, s. 14 (2) ; 10 Statutes 891. See also title HOSPITAL AUTHORITIES, p. 25.

(*c*) Public Assistance Order, 1930, s. 6 ; 12 Statutes 1053.

ministrative questions, especially in relation to the provision and maintenance of hospitals provided by local authorities under the P.H.As. [104]

Accommodation Required.—In estimating the number of hospital beds required for their area, a council must be guided mainly by local evidence as to the demonstrable need and demand for accommodation. This may be ascertained (1) from the records of patients on the waiting lists for admission to hospitals, preferably over a series of years, in order to determine whether the deficiency is static or steadily increasing; (2) from the number of emergency or other acute cases, unsuitable for entry in waiting lists, whose admission has had to be refused; (3) from the extent of overcrowding in existing hospitals; (4) from evidence of excessive and unnecessary occupation of hospital beds; and (5) from a comparison with the provision made and found to be utilised in other comparable areas. Guidance may also be obtained from official publications. For the isolation of persons suffering from acute infectious disease, a working ratio of one bed for every 1,000 of the population has been generally accepted, and this is useful so long as it is not regarded as a definite standard (*d*). Similarly for the treatment, observation, education and isolation of cases of tuberculosis, one bed for every 2,500 of the population has been recommended, one-half of such beds being in sanatoria (*e*). No standards have been established for general hospital accommodation, or for children or women in childbirth. A basis, however, may be found in the experience of certain large towns, where the authorities have provided beds for these combined purposes on a ratio varying from 3·3 to 5·4 per 1,000 (*f*). This type of accommodation is usually supplemented in a large measure by voluntary provision, the total volume of which should be ascertained both for the area under review and for the other areas with which it is being compared. Even when this has been done, the available records show that, when *all* hospital accommodation—exclusive of that for mental cases—is taken into consideration, there is a substantial difference in the ratio of beds to population, in both voluntary and council hospitals reserved entirely for the local population, this ratio varying from 5·70 to 8·59 per 1,000 (*g*). [105]

Co-operation with other Local Authorities.—On grounds of efficiency and economy a hospital of considerable size is preferable to a number of small hospitals serving the same area (*post*, p. 50). If, therefore, the population and requirements of the borough or district are small, a scheme for the joint use of hospitals by agreement, or the provision of a joint hospital with adjacent local authorities should be undertaken. See *ante*, p. 20. [106]

Co-operation with Voluntary Hospitals.—The councils of counties and county boroughs, being under an obligation to consult bodies representative of the managers and medical staffs of local voluntary hospitals when making provision for hospital accommodation in connection with the functions transferred to them from the former boards of guardians (*h*), should invite such voluntary organisations to set up

(*d*) M. of H. Memo. Hosp./2, January, 1924.

(*e*) Departmental Committee on Tuberculosis. Final Report, 1913.

(*f*) Annual Report of the Chief Medical Officer of M. of H., 1933, p. 202.

(*g*) *Ibid.*, p. 204.

(*h*) L.C.A., 1929, s. 13 (10 Statutes 891), and Poor Law Act, 1930, s. 8 (12 Statutes 973).

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representative committees, if they have not already done so. While recognising the limits of their responsibilities as to consultation (see *ante*, p. 28) it is desirable, in view of the similarity of the purposes served by council and voluntary hospitals, that their relations should be close and continuous in order to avoid wasteful competition (*i*). Tuberculosis and maternity and child welfare schemes have been partly, and venereal diseases schemes largely, operated by arrangement with voluntary agencies, and the power of councils to contribute to voluntary hospitals, either in discharge of their public health (*k*), or poor law (*l*) functions has been widely exercised. The nature of the responsibilities, however, of the two types of institution is different. Voluntary hospitals usually serve a much wider area than that of one local authority, while local authorities can usually assume responsibility only for the sick inhabitants of their area (*m*). Voluntary hospitals may decide for themselves as to the charges, if any, to be made to patients, whereas councils of counties and county boroughs, in so far as non-infectious disease is concerned, must recover the whole or part of the cost of maintenance and treatment of patients (*ante*, p. 28). Such a council must also give priority to the destitute sick because of their obligations under the poor law. Uniformity of practice and administration is therefore difficult to attain, but it has been suggested that there should at least be an attempt to arrange for an interchange of cases, and a common consultant staff in each area (*n*) and, also, a joint provident scheme for recovery of contributions (*o*). See title VOLUNTARY HOSPITALS AND INSTITUTIONS. [107]

Size of Institutions.—The multiplication of small hospitals is to be avoided as not leading to economy and efficiency (*p*), but little guidance is available as to the most desirable size. Institutions for tuberculosis should contain at least 100 beds (*q*). General hospitals should be at least of this size, and preferably much larger in order to permit of proper classification of patients, such hospitals being situated in the neighbourhood of large centres of population and serving wide areas (*r*). Maternity units, of not less than twenty beds (*s*), should be associated with general hospitals (*t*). [108]

Unification or Co-ordination of Hospital Committees.—A council may delegate the management of a hospital to an *ad hoc* committee, which may be a sub-committee of the public health committee (*u*). If several hospitals are administered under the P.H.A., one committee may conveniently be responsible for their management, an arrangement which facilitates interchange of staff and patients, centralised purchasing and uniformity of methods in recovering costs. Standardisation of supplies and centralised purchasing for all hospitals or similar institutions

(i) M. of H. Circular 1,000 of April 10, 1929, paras. 76—81.

(k) P.H.A., 1925, s. 64 (18 Statutes 1143), and L.G.A., 1929, s. 14 (1) (10 Statutes 891).

(l) Poor Law Act, 1930, s. 67; 12 Statutes 1001.

(m) P.H.A., 1875, s. 181; 13 Statutes 678. See also title HOSPITAL AUTHORITIES, *ante*, p. 19.

(n) M. of H. Annual Report, 1933—34, p. 95.

(o) L.G.A., 1929, s. 16 (1) proviso; 10 Statutes 893.

(p) M. of H. Memo. Hosp./2, January, 1924.

(q) Departmental Committee on Tuberculosis. Final Report, 1913.

(r) Scottish Board of Health, Annual Report, 1928, p. 87.

(s) *Ibid.*, p. 92.

(t) M. of H. Annual Report, 1933—34, pp. 78, 83.

(u) L.G.A., 1933, s. 85; 26 Statutes 352.

managed by an authority under different Acts and by separate committees leads to economy (a). [109]

Costing Returns.—Returns showing the cost of institutions are obtained from local authorities and published annually by the M. of H. (b). Accounts should therefore be kept in a form which will facilitate such returns, and also the calculation of the cost of maintenance to be charged to patients (c). Separate costing of ward and other units within a hospital has been found by some authorities to facilitate the discovery of special examples of wastefulness. See title **COSTING**. [110]

London.—See title **HOSPITAL SERVICES (LONDON)**.

- (a) Report of Committee on Local Expenditure (England and Wales), 1932, p. 98.
 (b) L.G.A., 1933, s. 284; 26 Statutes 456; also M. of H. Costing Returns.
 (c) L.G.A., 1920, s. 16 (3); 10 Statutes 898.

HOUSE PROPERTY MANAGEMENT

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See also titles : **HOUSING ;**
OVERCROWDING ;
RECONDITIONING OF HOUSES ;
SLUM CLEARANCE.

PROBLEMS OF HOUSE PROPERTY MANAGEMENT

The chief problem that confronts the housing authority (a) in the management of housing estates is to utilise the accommodation and resources so as to secure : (i.) that the houses with the higher rents are allocated to tenants with the greater incomes, or that the rents of houses are adjusted to suit the means of the tenants ; (ii.) that persons who are able to pay an economic rent should either be required to do so, or to leave the council's property ; (iii.) that accommodation should be rationed in accordance with the needs of the occupants (b) ; (iv.) that tenants who have been accustomed to live under slum conditions should be carefully supervised, until it is obvious that they are capable of looking after the new houses allocated to them (the property of tenants of this type usually needs disinfection before it is moved to new houses) ;

- (a) See title **HOUSING**. (b) M. of H. Annual Report, 1931-32, pp. 102-3.

and (v.) that the collection of rents should be punctual and systematic, and arrears kept down to a minimum. [111]

Adjustment of Rents.—In recent years many tenants have been occupying subsidised houses who could afford to pay higher rents and even economic rents. The report of the Ray Committee on Local Expenditure (c) underlined the need for taking steps to secure that subsidies should not be wasted by giving them to people who did not need them, and recommended that every effort should be made to increase the revenue derived from housing estates by requiring tenants who could afford it (i.) to pay higher rents or to buy their houses, or (ii.) to vacate their houses. It is still a matter of doubt, however, as to whether a large proportion of the occupants of subsidised houses could afford to pay a higher rent. Only a few authorities in England and Wales have made any investigations into the present means of their tenants, but these have revealed that only a very small number of the tenants could have paid more (d), whilst a recent report has estimated that in Scotland the proportion of houses occupied by well-to-do persons is only 5 to 10 per cent. of the total number of houses provided (e). The L.C.C. have carried out an investigation into the circumstances of 800 of the tenants on two of their estates, whom they believed to be no longer in need of subsidised accommodation, with the result that 50 per cent. of these tenants were able to show that their continued occupation of the houses was justified, and the remainder vacated the houses. It is considered that only a very small percentage of the tenants on the other estates could be regarded as not being in need of subsidised accommodation (f). On the other hand, local authorities have been encouraged to take into consideration the duty of remedying conditions, rather than rent-paying capacity, in allocating the houses constructed by them under the Acts of 1923 and 1924 (g).

Local authorities have not generally adopted a differential scale of rents; they have in the past relied on a system charging the net cost of each house (after deducting any subsidy that may be payable in respect of it) to the tenant, and the rents of the various classes of houses have thus tended to vary according to the Act under which they were built, or the cost of building at the time they were erected. A simple method of adjusting rents to means was thus made possible, by giving the houses built, for example, under the 1919 Act to tenants with the larger incomes, and those built under the later Acts to tenants with the smaller incomes. Now, however, under Housing Act, 1935, sect. 52 and Sched. V., the varying special conditions hitherto governing the rents of local authorities' houses in respect of which Exchequer subsidies are payable are repealed, and, subject to the observance of the general obligations specified in *ibid.*, sect. 51, local authorities are free to deal with these houses as a whole irrespective of any special conditions of the particular Act under which Exchequer assistance was provided (h). Even before this Act, the Leeds Corporation had instituted a detailed system of differential rents, under which the tenants with the larger incomes have been asked either to pay an economic rent or to move,

(c) Cmd. 4200, para. 95. (d) M. of H. Annual Report, 1932-33, p. 103.

(e) Department of Health for Scotland: Report of the Consultative Council in regard to the steps to be taken to secure that State-aided houses will in future be let only to persons of the working classes. 1932, para. 28. H.M.S.O. Price 4d.

(f) M. of H. Annual Report, 1933-34, p. 160.

(g) M. of H. Circular, 1288. Annual Report, 1931-32, p. 101.

(h) M. of H. Memorandum E on the Housing Act, 1935, p. 93, para. 35.

the subsidies paid in respect of their houses being thus made available for the reduction of the rents of the less well paid tenants (*i*). Local authorities should consider carefully some investigation into the financial position of their tenants (*k*). Greater attention to the number of the occupants is also necessary, for while on the one hand it is an offence for housing authorities to permit overcrowding on their estates (*l*), on the other hand no waste of accommodation should be permitted, such as occurs when a three-bedroomed house is allocated to married persons without children or with only one child (though this does not apply to *young* married persons), or where such a house continues to be occupied by parents whose family has left them (*m*). [112]

Selection of Tenants.—This is usually the entire responsibility of the housing committee, or of a sub-committee of that committee, but a few authorities have placed the selection of the tenants in the hands of their officers. In any case, the housing department should keep a register of applications so that the committee may be kept informed of the demand for houses, and of the types most in demand. The register should be "open"; every citizen should be entitled to add his name, provided that his circumstances are such as to require assistance from the authority. In Birmingham, the applications are tabulated by machinery, every application is dealt with in strict order of priority, and houses are allotted among the various classes of families so as to secure that the larger families obtain greater consideration than the smaller.

The question also arises as to whether the applicant should be given a new or an old house. Factors such as place of work, means, and cleanliness must be taken into consideration. In Birmingham the difficulty is largely overcome by the introduction of an exchange system in respect of pre-war houses, by mutual agreement between the private landlord and the corporation. Since 1928 it has been the policy of the corporation to purchase in the open market well-conditioned pre-war properties, which are not likely to come within slum-clearance schemes, situated in or near the central areas. The occupants of these houses often wish to move to a municipal estate, and, in these circumstances, the vacant accommodation is used for housing the families displaced from slum clearance areas, whose work necessitates their living near their employment. [118]

Supervision of Tenants.—Two factors now operate to bring housing authorities into contact with a more difficult class of tenant: (1) they are required to cater for persons living in unsatisfactory housing conditions, and (2) the slum clearance campaign involves re-housing a number of tenants who have lived under extremely bad conditions (*n*). This matter was dwelt on at some length by the Moyne Committee, whose report attached great importance to the employment of properly trained house property managers. While no desire was expressed to exclude trained men from this service, it was thought that management

(*i*) M. of H. Annual Report, 1933-34, p. 160. On the whole of this question the Report of the Consultative Council to which reference has already been made in note (*e*) is of great interest.

(*k*) M. of H. Annual Report, 1930-31, p. 98.

(*l*) Housing Act, 1936, s. 3 and proviso to s. 10 (1). See title OVERCROWDING.

(*m*) Committee on Local Expenditure, 1932, p. 65.

(*n*) As to need for skilled management, see M. of H. Annual Reports, 1933-34, p. 161, and 1934-35, p. 168.

on the Octavia Hill system (*o*) would enable assistance to be given to the housewife, and that women managers have a special aptitude for this kind of work, especially as visits to the house are usually made when the husband is away at work (*p*). [114]

Collection of Rents.—The local authority find the problem of the collection of rents more difficult than the ordinary landlord, because they cannot accept or reject tenants on financial grounds alone. In particular, they must give preference to tenants with the larger families, though in some cases the main purpose of the Housing Acts has been subordinated to the desire of a local authority to obtain satisfactory tenants, and in others the difficulty and the unpopularity of collecting rents have been given too much weight, but this is by no means the general rule. One local authority, for instance, have reported that over 90 per cent. of their tenants were in arrears with their rent, another allowed arrears of over £8,000 to accumulate on 662 houses, and a third ascribed arrears of over £4,000 on 819 homes to the unsatisfactory conduct of a rent collector (*q*). This again points to the need for employing trained rent collectors.

It must be remembered, however, that in the distressed areas rent arrears are often high simply because of the poverty of the tenants. No amount of specialised management can cure this difficulty. [115]

METHODS OF HOUSE PROPERTY MANAGEMENT

The methods adopted by local authorities for the management of the house property erected and leased by them under the Housing Acts have been extremely varied.

In the past five years or so, several systems of house property management have been evolved by housing authorities which can be classified under a few headings. The administrative arrangements are at the moment in a very unstable condition, as most systems of management exhibit a lack of a clear division of executive authority between the councillor and the official. This occurs to a certain extent throughout local administration, but it is most marked in this sphere. [116]

Divided Management.—Most local authorities have divided the management of their houses between the surveyor's, the treasurer's, and the clerk's departments, in general placing the collection of rents on the same basis as the collection of any other debt. The rents may either be paid at the council offices, or a number of collectors may be employed to collect the rents on the estates, who are often part-time men doing other work during the second half of the week. The selection of the tenants to occupy the houses, and the deciding of matters connected with rent arrears, dilapidations, structural repairs, and the like, are usually the responsibilities of the housing committee or of a sub-committee of that committee (*r*). The actual work of carrying out the repairs, or supervising the work done, is entrusted to the surveyor's department, and the clerk's department is responsible for obtaining any orders of the court that may be necessary. There is

(*o*) See *post*, p. 56.

(*p*) Report of the Departmental Committee on Housing, 1933, Cmd. 4897, pp. 12—13, 20.

(*q*) M. of H. Annual Report, 1929—30, p. 82.

(*r*) See M. of H. Annual Report, 1932—33, pp. 102—3.

thus very little supervision of the tenant once he has been installed in a house. Seventy-nine housing authorities entrust the management of their estates primarily to the surveyor's department, seventy-five to the finance department, and fifty-eight to the clerk's department. Twenty-one do not lay any special responsibility on any one department, but rely on the appropriate committee, usually the housing committee, to co-ordinate their work. [117]

The Management Department.—To lessen the overlapping which results from entrusting house property management to several departments, a number of local authorities have established a system which secures more co-ordination. One officer is responsible for the whole management of the houses, with the sole exception that the selection of the tenants is still carried out by a committee. The largest towns appoint a "Director of Housing," who is responsible for the management as well as for the erection of the houses. If a Director of Housing is not appointed, the management of the houses may be entrusted to an "Estates Surveyor," who is a subordinate of the authority's surveyor. Under this system there is little, if any, more supervision than under the first system. Occasionally, however, "lady visitors" or "welfare supervisors" may be appointed, but they usually form part of the staff of the M.O.H., and overlapping again arises. [118]

The Dual System.—This system has been developed in Birmingham, where a division of function has been made between rent collection and social work. The former is carried out by men; the latter is entrusted to specially selected women visitors. The rent collection staff each collect rent from between 600 and 700 houses per week. This work is carried out during the first three days of the week, the last three being devoted to the inspection of the estates, the investigation of complaints, the balancing of accounts, and other duties referred to the collectors by the head office. It has been found that where these functions are efficiently carried out, the collector has no time to devote to what may be termed the social side of estate management. The success of the collection system is shown by the fact that at the December quarter of 1934, 99·95 per cent. of the total amount of rent due was collected, the arrears working out at 1s. 1½d. per house or 0·19 per cent. of the actual rent due for the year ending December 31, 1934. The estates department also employed a staff of ten women visitors in March 1935, including one supervisor. Their work is spread over every aspect of social life. It is considered that advanced educational qualifications are not so essential for their duties as a natural aptitude for the handling of tenants with tact and sympathy. The education of the ingoing tenants is perhaps the principal duty of the visitor, about 10 per cent. of these requiring special supervision; but her other duties are extremely varied, ranging from the visiting of families before and after removal, and the giving of advice concerning the cleaning of ranges, baths and other fittings, to the settling of domestic disputes and neighbours' quarrels, arranging for the distribution of gifts of furniture, clothing, etc., the finding of work for tenants, and assisting in obtaining nominations for fatherless children and children of large families for admission into institutions. [119]

The Agency System.—A few local authorities entrust the collection of rents to agents, paid by commission. [120]

The Octavia Hill System.—In this system a management department performs the whole work of managing the houses owned by a local authority. The selection of the tenants is carried out by it; it decides what repairs are to be undertaken, and it institutes proceedings for ejectment, with the help of the legal department whenever necessary. Lastly, it is responsible for the collection of the rents. The essential feature of the system is the collection of the rents by a highly trained staff, the theory being that the higher the ability and the status of the collector who comes into contact with the tenant, the greater the probability that the tenant will come to respect the property which he occupies, and make use of the facilities which a properly planned house offers. Not least of all, he will come to realise that the house is something really worth having, and he will do all in his power to pay the rent regularly, lest he lose it. The example of the Chesterfield council in appointing an Octavia Hill house property manager in 1927 for a large part of their estates has been followed by many other authorities, especially since the acceleration of the slum clearance programmes has brought housing authorities into contact with a new and more difficult type of tenant (s). An interesting example of the successful operation of this system is that afforded by the Grosvenor Estate, owned by the Westminster City Council. Despite the fact that 85 per cent. of the tenants were re-housed, the subsequent arrears of rent on the estate were only 0·05 per cent. of the gross rental. The Octavia Hill system is particularly suitable for flats, but it is not necessarily the best for all districts. [121]

The Management Commission.—Local authorities have recently been authorised by sect. 25 of the Housing Act, 1935, to submit to the Minister of Health a scheme for the establishment of a management commission. If they are reluctant to do the work through one of their own committees they may transfer to the management commission the duty of performing all or any of their functions relating to the management, regulation, control, repair and maintenance of the working-class houses they possess, and of the other buildings and land connected with them. The scheme must provide for the incorporation of the commission, under the name of the Housing Management Commission, with the addition of the name of the district of the local authority. The commission has perpetual succession and a common seal. The constitution, procedure and functions of the commission are to be set out in the scheme. The following matters in particular may be dealt with by it: (i.) the mode of appointment and term of office of the members; (ii.) the payment of the chairman out of the funds under the control of the commission, but this does not apply if the chairman is a member of the local authority or of any of its committees or sub-committees, or a representative of the authority on a joint committee appointed by agreement between it and another body; (iii.) the employment of officers and staff by the commission, and the remuneration of the persons so employed out of the funds controlled by the commission; (iv.) the financial relations between the local authority and the commission; (v.) the conferring of power on the local authority to defray any of the expenses of the commission temporarily; (vi.) the audit of the accounts of the commission by the district auditor, or otherwise; (vii.) the

(s) Twenty-nine local authorities employed Octavia Hill managers in December, 1934.

determination of the property to be vested in the commission, and the estate or interest in it to be transferred to the commission, and the manner of the vesting of the property in the commission; (viii.) imposing of a duty on the commission of consulting the central housing advisory committee (i) regarding any matters specified in the scheme. The Minister may approve a scheme submitted to him under this section with or without modifications, and any scheme may be amended by a subsequent scheme prepared by the local authority and confirmed by the Minister (u). [122]

The Dutch System.—The Octavia Hill system has long been in operation in Holland, but in a number of Dutch towns, particularly in The Hague and Amsterdam, special arrangements have been made for the housing of undesirable tenants. Separate groups of houses, called "Controlled Dwellings" are provided for them. These families are selected by women managers if in their opinion they are unfit to occupy houses of the usual type. They are given the option of being placed under observation in these Controlled Dwellings or of being allotted a temporary house for a short time only. Supervision is in the hands of a superintendent in each group of Controlled Dwellings; it is his duty to see that the efforts of the various societies which concern themselves with the reclamation of families and individuals are so directed that the greatest effect will be secured. The Controlled Dwellings are divided into three classes, to which a descending standard of supervision is applied. When a family proves that it is capable of looking after a house properly, it is allowed to move from the highest class to an ordinary house. If after a certain time it is unable to prove this, it passes out of the hands of the housing department altogether, and its members will very likely be divided by the Public Assistance Department between several poor law institutions. Management of the ordinary type of house in a town such as The Hague is entrusted to a staff of women inspectors and male rent collectors. In consequence of the strict methods of selection and supervision applied to the estates, the rent arrears are kept at a very low figure, varying, in The Hague, between 0.08 per cent. and 0.02 per cent. over the period 1928-33. [123]

TRAINING AND QUALIFICATIONS OF HOUSE PROPERTY MANAGERS

Some municipalities, notably Rotherham, organise special training schools for house property managers. The Society of Women Housing Estate Managers also arranges a practical course of training for the work (a). The qualifications that can be obtained include: (i.) The Women House Property Manager's certificate of the Chartered Surveyor's Institution; (ii.) The professional examination of the Chartered Surveyor's Institution; (iii.) The B.Sc. Degree in Estate Management of London University. [124]

The Institute of Housing Administration.—This was founded in 1933, having its origin in meetings between a small group of chief housing

(i) See title HOUSING.

(u) Housing Act, 1935, s. 24 (5).

(a) Particulars may be obtained from the Society of Women Housing Estate Managers, 36, Victoria Street, London, S.W.1.

officials from various parts of the country, to discuss problems of estate management. The Institute, to which 170 members belonged in March 1935, has branches in London, Birmingham and Yorkshire, which hold frequent meetings. The Institute has established a scheme of examinations for the training of those engaged in estate management. The examination for Associate Membership deals with the various legal and technical subjects with which those who are engaged in the work must be acquainted; the Fellowship examination covers much the same ground, but the degree of specialisation is higher. The Minister of Health has authorised the payment of expenses to members of councils and officials attending the annual conference of the Institute (b). [125]

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General.—The L.C.C. have one organisation which deals with all aspects of housing management. It receives applications for tenancies, effects the lettings, collects the rents, repairs the properties and maintains by local resident staff a personal contact with all tenants. All estates are directly administered from the central office, through the medium of resident superintendents at the large estates and of resident caretakers at the small estates. These local officers are in close touch with the central office. Although applications for rooms are received at any estate, no letting is effected until the applicant's references have been taken up, and the applicant accepted as a tenant from the central office. At the larger estates under the charge of superintendents, the tenants are required to pay their rents weekly at the estate offices, and these receipts are paid daily into a local bank. At the smaller estates, where caretakers are in charge, the rents are collected by collectors, who visit each house once a week. In both cases, the account books are examined at the central office, and tenants in arrear are communicated with therefrom. [126]

Lettings.—Selection of tenants is not made on the principle of finding the best applicants, and letting takes the form rather of allotment of accommodation. At the present time there are in operation numerous and somewhat complicated regulations which have been made from time to time, but generally it may be said that the main considerations are to secure that vacant accommodation is allotted to those applicants who most need it and to assist the council in its various housing operations. All accommodation is strictly rationed, no applicant being allowed to become the tenant of more rooms than he needs, having regard to the sex and ages of the members of his family and the bedrooms required. No applicant is accepted in any circumstances where it appears that he and his family are adequately housed or have sufficient means to secure accommodation provided by private enterprise. On the other hand, existing tenants when not protected by the Rent Restrictions Acts, who by reason of changes in their family are found to be in occupation of more accommodation than they need, are required to remove or transfer to less accommodation on the council's estates, while tenants whose means are considered to be greater than would justify them in remaining as tenants of accommodation subsidised out of public funds, are required to vacate and obtain accom-

(b) See L.G.A., 1933, ss. 228 (1), 267; M. of H. Circular 1424; also Local Government (Conferences) Regulations, 1934 (S.R. & O., 1934, No. 690).

modation elsewhere. In accepting tenants care is taken to see that the family will not overcrowd (c) the dwelling, and at the commencement of the tenancy the family must satisfy this condition; but it may happen that in course of time by natural growth in numbers and age, and the introduction of other members of the family not previously living with the tenant, the tenement becomes overcrowded. In order to ascertain whether such is the case, an enumeration of the occupants of each tenement is taken yearly, and all cases of overcrowding ascertained, at present on the basis of two persons a room, all children under five being counted as nil, and any child between the age of five and ten years as half an adult. Cases of overcrowding are usually dealt with by transfers to larger dwellings.

Tenants are not allowed to take lodgers at the block dwelling estates, but on the cottage estates permission is given by the council, under certain conditions, to old tenants of pre-war cottages who make the request, to take a lodger. [127]

Maintenance.—The whole of the repairs are carried out by workmen caretakers at the small estates, and by workmen who work under the superintendents at the large estates. There is also a staff of jobbing workmen and painters who carry out repairs under direct supervision from the central office. [128]

Rents.—Rents are payable weekly in advance as from the Monday in each week. When a tenant is in arrear with his rent it is necessary to serve a notice to quit, and the time when this action is taken is determined by a consideration of all the circumstances. In normal cases it may be when three weeks' arrears have accumulated, but in certain cases action may be taken when one week's rent is in arrear. Attached to each notice to quit is the following announcement:

If the arrears of rent are not paid by the date of expiration of the notice to quit, or alternatively possession of the premises given, proceedings must necessarily be taken without further warning.

If the arrears are due to special circumstances, a satisfactory arrangement for payment must be made with the superintendent before the expiry of the notice.

At any time after the service of the notice to quit and prior to the issue of a summons, the estate superintendents are empowered, if after investigation the circumstances of the case have shown the desirability of such a course, to agree to payment of arrears by satisfactory weekly instalments in addition to the current rent, and when such an arrangement is made and adhered to no further action is taken. [129]

(c) The word "overcrowding" has now attained a strictly technical meaning for the purposes of the Housing Act, 1935, see that Act, s. 2, and Sched. I.

HOUSE REFUSE, COLLECTION, DISPOSAL AND DESTRUCTION OF

See REFUSE.

HOUSEBOATS

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Control.—There is no general enactment enabling local authorities to control or regulate the use of houseboats, either by means of licences or bye-laws. Sect. 172 of the P.H.A., 1875 (*a*), allows local authorities to control pleasure boats and vessels, but this section has always been regarded as covering boats and vessels in which pleasure trips are made. A few local authorities (*b*) have obtained Parliamentary powers enabling them to make bye-laws for the regulation and control of houseboats, but it is understood that these powers have not yet been exercised. Existing general enactments as to temporary dwellings have sometimes been extended and applied to houseboats; thus sect. 209 of the Bournemouth Corporation Act, 1930, applies to houseboats used for human habitation on any navigable river in the borough, sect. 43 of the P.H.A., 1925 (*c*), as to nuisances caused by occupation of tents and vans. In view of this specific provision it appears that, apart from local legislation, neither sect. 9 of the Housing of the Working Classes Act, 1885 (*d*) (which deals with nuisances in and the overcrowding of tents, vans, sheds and similar structures), nor sect. 43 of the P.H.A., 1925, applies to houseboats. Where waters are under the control of a conservancy, navigation, or water authority, houseboats (in common with other craft) may be controlled by the statutes or charters governing the *ad hoc* authority, or by bye-laws made thereunder. Such control usually involves (1) the regulation of the navigation and mooring of vessels, and (2) the prevention of nuisances and the pollution of the waters within the jurisdiction of the authority (*e*). It is submitted that where a houseboat is permanently moored, with the express or tacit consent of a riparian owner or occupier, and either the houseboat or the adjacent land is in such a state as to be a nuisance or injurious to health, the

(*a*) 13 Statutes 007

(*b*) *E.g.* Bournemouth Corp'n. Act, 1930 (20 & 21 Geo. 5, c. clxxxi.), ss. 207—209; and the City of London (Various Powers) Act, 1933, ss. 6, 7; 26 Statutes 591—93. Note protection for the Port of London Authority in s. 7 of the Act of 1933. See also s. 49 of the Maidstone Corp'n. Act, 1935 (25 & 26 Geo. 5, c. lxxxix).

(*c*) 13 Statutes 1133.

(*d*) *Ibid.*, 808.

(*e*) *E.g.* by bye-law 49 of the Thames Conservancy (Navigation and General) Bye-laws, 1934 (made under the Thames Conservancy Act, 1932), the owner or master of any vessel on the Thames above Teddington Lock must take precautions to prevent the passage of sewage or other offensive or injurious matter from the vessel into the river. Similarly, the Great Yarmouth Port and Haven Commissioners (who control the tidal portions of the East Norfolk rivers and broads) provide in the bye-laws relating to the registration of pleasure craft (including houseboats) that before registration, information shall be furnished as to the method (if any) of disposal of sewage, etc., proposed on the boat.

local sanitary authority could deal with it under sect. 91 of the P.H.A., 1875 (f), and serve a notice under sect. 94 on the occupier of the houseboat as the person by whose default or sufferance the nuisance arose. Whilst this action would probably be effective in the case of a houseboat more or less permanently moored, it would not avail in the case of a houseboat which was navigated from place to place, as it is doubtful whether such a houseboat would be within the definition of "premises" in sect. 4 of the P.H.A., 1875 (g). [180]

The passage of solid or liquid sewage-matter from a houseboat into a non-tidal stream (h), or into tidal waters which are included in the definition of "stream" by an order of the M. of H. (i), is an offence against sect. 3 of the Rivers Pollution Prevention Act, 1876 (k), for which the remedy is to obtain an order of the county court restraining the commission of the offence, but as under sect. 6 the consent of the M. of H. to proceedings is necessary, and under sect. 18 two months' notice of the intention to take proceedings must be given, the Act of 1876 would only meet cases of serious and continued pollution from a houseboat.

As to waters within the district of a port sanitary authority, reference should be made to the powers conferred by the order constituting the authority. See title PORT SANITARY AUTHORITIES. [181]

Rating.—A houseboat is not a rateable hereditament within the scope of the Rating and Valuation Act, 1925, but where there is an exclusive occupation of moorings, attached to the soil and used in connection with the houseboat, the occupier of the houseboat is rateable in respect of the moorings, even if the moorings are held under a licence only from the owner or occupier of the soil (l). Apparently, the amount of the assessment is not limited by the amount of the consideration paid for the use of the moorings, but may be based on the sum which might be realised by letting the houseboat to a "hypothetical tenant" (m). To bring the moorings within liability to rating, there must be evidence of exclusive and beneficial occupation of the soil by the party to be rated. An attempt to rate a boat-club barge moored at Oxford failed for lack of evidence of exclusive occupation, as did attempts to rate a coal hulk on the Thames, and a floating pontoon landing-stage moored in the River Humber at Hull (n). [182]

London.—Powers of control over houseboats on the River Thames are exercised by the Thames Conservators under sect. 142 of the Thames Conservancy Act, 1932 (o), as regards the portion of the river

(f) 13 Statutes 661.

(g) *Ibid.*, 624.

(h) Includes a lake, and, *semble*, a non-tidal "broad" (Rivers Pollution Prevention Act, 1876, s. 20; 20 Statutes 323).

(i) See the Act of 1876, s. 20 (20 Statutes 323), and title POLLUTION OF RIVERS.

(k) 20 Statutes 316.

(l) *Gooding v. Benfleet U.D.C.* (1933), 49 T.L.R. 298; Digest Supp.; following *Cory v. Bristol* (1877), 2 App. Cas. 262; 38 Digest 451, 173.

(m) In *Gooding's Case* the annual payment for the use of the moorings and for access to the houseboat over duckboards, provided by the riparian tenant, was £1, but the assessment was fixed at £5 gross and £3 rateable.

(n) *Vide Grant v. Oxford Local Board* (1868), L. R. 4 Q. B. 9; 38 Digest 479, 382; *Cory v. Greenwich (Churchwardens)* (1872), 27 L. T. 150; 38 Digest 480, 384; *M.S. & L. Railway v. Kingston-upon-Hull Governor* (1896), 60 J. P. 789; 38 Digest 479, 380.

(o) 22 & 23 Geo. 5, c. xxxvii.

under their control. By sects 6, 7 of the City of London (Various Powers) Act, 1933 (*p*), bye-laws subject to the confirmation of the M. of H., may be made with regard to houseboats within the port of London, the bye-laws for some purposes being made by the Port of London authority and for other purposes by the Common Council of the City of London. Sect. 38 of the Port of London Act, 1935 (*q*), enacts further provisions. [193]

(*p*) 26 Statutes 591—93.

(*q*) See 25 & 26 Geo. 5, c. cxvi.

HOUSES, CLEANSING OF

See DISINFECTION ; INSANITARY HOUSES.

HOUSES LET IN LODGINGS

See LODGING HOUSES.

HOUSES, RECONDITIONING OF

See RECONDITIONING OF HOUSES.

HOUSES UNFIT FOR HUMAN HABITATION

See INSANITARY HOUSES.

HOUSING

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See also titles :

ACQUISITION OF LAND ;
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 COMPENSATION ON ACQUISITION OF
 LAND ;
 COMPULSORY PURCHASE ;
 DEFAULTING AUTHORITY ;
 FAIR WAGE CLAUSE ;

FLATS ;
 HOUSE PROPERTY MANAGEMENT ;
 HOUSING ASSOCIATIONS ;
 HOUSING BONDS ;
 HOUSING SUBSIDIES ;
 INQUIRIES ;
 INSANTARY HOUSES ;
 LOCAL LOANS ;
 OVERCROWDING ;
 RECONDITIONING OF HOUSES ;
 RESTRICTIVE COVENANTS ;
 SLUM CLEARANCE ;
 SMALL DWELLINGS.

INTRODUCTION

The existing legislation governing the provision of houses for the working classes (a) by local authorities is to be found in the Housing Acts, 1925, 1930 and 1935. These Acts may be cited together as the Housing Acts 1925 to 1935, and by sect. 100 (2) of the Act of 1935 they are to be construed together as one Act, except that sects. 37 and 38 of the Housing Act, 1935, are to be construed as one with the Housing (Rural Workers) Acts, 1926 and 1931, whilst sect. 92, amending the Small Dwellings Acquisition Acts, 1899 to 1928, stands by itself.

The present title deals with all general powers relating to the housing of the working classes, the more specialised powers being treated in separate titles. The sanitary condition of individual houses is dealt with in the title **INSANITARY HOUSES**; and that of groups of houses in the titles **SLUM CLEARANCE** and **OVERCROWDING**, while the improvement of houses, particularly under the Housing (Rural Workers) Acts, is dealt with in the title **RECONDITIONING OF HOUSES**. Some Acts of Parliament prior to the Housing Acts, 1925 to 1935, still have effect as regards the continued payment of subsidies under them; these are dealt with, together with all other matters relating to Government subsidies, in the title **HOUSING SUBSIDIES**. The powers of local authorities to assist building by making advances, or guaranteeing loans, are dealt with in the titles **ADVANCES BY LOCAL AUTHORITIES** and **SMALL DWELLINGS**, and all matters relating to housing associations, housing trusts and public utility societies are dealt with in the title **HOUSING ASSOCIATIONS**. The methods and problems of managing housing estates are the subject of the title **HOUSE PROPERTY MANAGEMENT**.

Part VII. of the L.G.A., 1933, which codifies the law relating to the acquisition of, and dealings in, land by local authorities, does not affect any provisions relating to the acquisition, appropriation, or disposal of land by a local authority contained in the Housing Acts, 1925 and 1930, or in any statutory order made thereunder, or the application of any capital money arising from land, or empower a local authority to effect any such transaction otherwise than under those provisions (b). [184]

POWERS OF THE MINISTER OF HEALTH

Central Housing Advisory Committee.—Under sect. 24 of the Housing Act, 1935, the Minister must appoint a committee, with the above title, for the following purposes: (i.) advising him on any matter connected with a temporary increase of the permitted number of persons, in relation to overcrowding (c), (ii.) advising housing management commissions (d), (iii.) advising him on any question which may be referred by him to the committee relating to any other matter arising in connection with the execution of the enactments relating to housing,

(a) "Working classes" is not defined in the Housing Acts, except in para. 12 (e) of the Fifth Schedule to the Housing Act, 1925 (18 Statutes 1077) for the purposes of that schedule. The courts have, however, been compelled to construe the term on a number of occasions—see *L.C.C. v. Davis* (1897), 62 J. P. 68 (at pp. 72, 73); 26 Digest 510, 2149; *White v. St. Marylebone Borough Council*, [1915] 3 K. B. 249 (at p. 257); 38 Digest 216, 507; *Arlidge v. Tottenham U.D.C.*, [1922] 2 K. B. 710; 38 Digest 214, 489.

(b) L.G.A., 1933, s. 170 (g), and Seventh Schedule; 26 Statutes 404, 509.

(c) See title **OVERCROWDING**.

(d) See title **HOUSE PROPERTY MANAGEMENT**.

(iv.) considering the operation of the Housing Acts, and making representations to him with respect to matters of general concern arising in connection with their execution. The Minister may make provision by order for the constitution and procedure of the committee (*dd*), and he may also pay such expenses of the committee as he may, with the approval of the Treasury, determine, out of moneys provided by Parliament (*ibid.*). [185]

Housing Inquiries and Reports.—The Minister has a general power to cause such local inquiries on housing matters to be held as he may think fit (*e*).

Further, where it appears to him that owing to density of population, or any other reason, it is expedient to inquire into the circumstances of any area with a view to determining whether any powers under the Housing Acts should be put into force in that area, he may require a local authority to make a report to him containing such particulars as to the population of their area and other matters as he may direct, and any expenses incurred by the authority must be paid as expenses incurred under such Part of the Housing Act, 1925, as he may determine (*f*). [136]

Powers on Default.—By sect. 52 of the Housing Act, 1930 (*g*), the Minister is given special powers to determine whether, after causing a public local inquiry to be held on the subject, or not a local authority (not being an R.D.C.) (*h*) have failed to exercise their powers under the Housing Acts. An inquiry into such matters may be held either at the discretion of the Minister, or when a complaint has been made to him alleging such a failure. If it concerns any non-county urban district, the complaint must be either by the council of the county in which the area is situate, by any justice of the peace acting for it, or by any four or more local government electors of the area. If the local authority is not the council of an urban or rural district, the complaint must be made by any justice of the peace acting for the area of the authority, or by any four or more electors of that area. If, after the inquiry has been held, the Minister is satisfied that there has been a failure on the part of the local authority, he may make an order declaring them to be in default, and directing them to exercise such of their powers as may be specified in the order, in such manner and within the time specified in the order. If an authority fail to comply with the requirements of such an order, the Minister may, in lieu of taking legal proceedings to enforce it, adopt one of the following courses : (i.) if the local authority concerned is the council of an urban district, he may make an order directing the county council to perform such of the obligations of the district council under the original order within such times as may be specified in the order addressed to the county council ; or (ii.) in any case, he may make an order rendering exercisable by himself such of the powers of the local authority under the Housing Acts as may be specified in his order (*ibid.*). An order directing a county council to perform any of the obligations of an U.D.C. may (i.) transfer to the county council any of the powers conferred on local

(*dd*) See Ministry of Health (Central Housing Advisory Committee) Order, 1935 ; S.R. & O., 1935, No. 1115.

(*e*) Act of 1925, s. 116 (13 Statutes 1064) ; L.G.A., 1938, s. 290 (26 Statutes 459). See also title INQUIRIES.

(*f*) Act of 1925, s. 117 ; 13 Statutes 1065.

(*g*) 23 Statutes 491.

(*h*) As to rural district councils see *post*, p. 73.

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authorities by the Housing Acts, for the purpose of enabling the county council to comply with the order, and (ii.) provide that sect. 63 of the L.G.A., 1894 (i), shall apply in relation to the powers so transferred as it applies in relation to powers transferred under that Act, subject to such modifications and adaptations as may be specified in the order (k).

[187]

Any expenses incurred by the Minister in the exercise of powers transferred to himself must be paid in the first instance out of moneys provided by Parliament, but the amount of the expenses must be refunded by the local authority on demand, and are recoverable as a debt due to the Crown. The payment of these expenses is, to the extent which may be sanctioned by the Minister, a purpose for which a local authority may borrow (l). The Minister may by order vest in and transfer to the local authority any property, debts or liabilities acquired or incurred by him in exercising the powers of the local authority (l). Orders for the transfer of powers made by the Minister or a county council may be varied or revoked by a subsequent order (m).

[188]

Power to Prescribe Forms, etc.—The Minister may by regulations prescribe anything which is required to be prescribed by the Housing Acts, and the form of any notice, advertisement, statement or other document which is required or authorised to be used under, or for the purposes of, the Housing Acts (n). All such regulations are to be laid before each House of Parliament (o). [189]

POWERS OF LOCAL AUTHORITIES

The Local Authority.—The local authority for the purpose of Part III. of the Housing Act, 1925, the source from which the powers relating to the provision of houses for the working classes are mainly derived is, outside London, the council of the borough or urban or rural district (p). Borough and district councils outside London are also local authorities for the purposes of Part III. of the Housing Act, 1925, and Part I. of the Housing Act, 1935, which amend and extend Part III. of the Act of 1925 (q). [140]

A local authority may for the purpose of Part III. of the Housing Act, 1925, exercise the same powers as in the execution of their duties under the P.H.As. (r). [141]

Joint Action of Local Authorities.—Where, upon an application made by one of the local authorities concerned, the Minister is satisfied that it is expedient that any local authorities should act jointly for any purpose of the Housing Acts, either generally or in any special case, he may by order make provision for the purpose, and any provisions so made have the same effect as if they were contained in a provisional order made

(i) 10 Statutes 816.

(k) Act of 1930, s. 53 (1); 23 Statutes 432.

(l) *Ibid.*, s. 54 (*ibid.*, 438), as in part repealed, except as to London by L.G.A., 1933.

(m) *Ibid.*, s. 56; *ibid.*

(n) *Ibid.*, s. 57; *ibid.*, 434. See the Housing Acts (Form of Orders and Notices) Regulations, 1935 (Provisional).

(o) *Ibid.*, s. 58; 23 Statutes 434.

(p) Act of 1925, s. 80 (1); 13 Statutes 1045.

(q) See Act of 1930, s. 25 (3) (23 Statutes 416), and Act of 1935, ss. 21 and 97 (2).

(r) Act of 1925, s. 57 (3) (13 Statutes 1035), as in part repealed by L.G.A., 1933.

under sect. 279 of the P.H.A., 1875 (*s*), for the formation of a united district confirmed by Parliament (*t*). [142]

Constitution of Housing Committees.—The legislation concerning the constitution and functions of housing committees is now contained in the general provisions of the L.G.A., 1933 (*u*). The only special legislation that remains applies to county councils, and requires that all matters relating to the exercise and performance by a county council of their powers and duties under the Housing Acts (except the power of raising a rate or borrowing money) shall stand referred to the public health and housing committee of the council, required to be appointed by sect. 71 of the Housing, Town Planning, etc., Act, 1909 (*a*), and the council, before exercising any such powers, must, unless in their opinion the matter is urgent, receive and consider the report of this committee with respect to the matter in question (*b*). The council may also delegate to this committee, with or without restrictions and conditions as they think fit, any of their powers under the Housing Acts, except the power of raising a rate or borrowing money, and except the power of resolving that the powers of a district council in default should be transferred to the county council (*b*). [143]

Duty to Review Housing Conditions.—Sect. 25 of the Housing Act, 1930 (*c*), imposes upon every local authority the duty of considering the housing conditions in their area, and the needs of the area with respect to the provision of further housing accommodation for the working classes, and for that purpose to review such information as is brought to their notice, either as the result of inspections and surveys carried out by them, or otherwise. As often as occasion arises, or within three months after notice has been given to them by the Minister, local authorities must prepare and submit to him proposals for the provision of new houses for the working classes, distinguishing those houses which the authority propose to provide for the purpose of rendering accommodation available for persons to be displaced by action taken under the authority of the Housing Act, 1930 (*d*). [144]

Power to Erect Houses.—A local authority may provide housing accommodation for the working classes in any of the following ways: (*i*.) by the erection of dwelling-houses on any land acquired or appropriated by them; (*ii*.) by the conversion of any buildings into dwelling-houses for the working classes; (*iii*.) by acquiring houses suitable for the purpose; (*iv*.) by altering, enlarging, repairing, or improving any houses or buildings which have, or an estate or interest in which has, been acquired by the local authority (*e*).

The local authority may alter, enlarge, repair, or improve any house

(*e*) 13 Statutes 742. See classified list of local orders, S.R. & O., 1920, Vol. II., p. 1060 (East Anglesey).

(*t*) Act of 1925, s. 112; 13 Statutes 1063. See also title JOINT ACTION.

(*u*) Ss. 85, 94—6. See title COMMITTEES. As to the contractual powers of the housing committee, see *Bean (William) & Sons v. Flaxton R.D.C.*, [1929] 1 K. B. 450; Digest (Supp.).

(*a*) 10 Statutes 848.

(*b*) Act of 1925, s. 111 (2); 13 Statutes 1063. See *post*, pp. 73, 74.

(*c*) 23 Statutes 416.

(*d*) Act of 1930, s. 25; 23 Statutes 416. See also titles INSANITARY HOUSES, OVERCROWDING and SLUM CLEARANCE.

(*e*) Act of 1925, s. 57 (1) (13 Statutes 1034), as amended by s. 20 (2) of the Act of 1935.

so erected, converted, or acquired, and may fit out, furnish, and supply any such house with all requisite furniture, fittings, and conveniences (*f*).

For the purpose of the interpretation of these powers, "dwelling-house" includes any yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith (*g*). The power to provide housing accommodation includes the provision of lodging houses, and separate houses or cottages containing one or several tenements, and, in the case of a cottage, a cottage with a garden of not more than one acre (*h*). It also includes a power to provide and maintain, with the consent of the Minister, and, if desired, jointly with any other person, in connection with such housing accommodation, any building adapted for use as a shop, any recreation grounds, or other buildings or land which in the opinion of the Minister will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided (*i*).

It is the duty of every local authority by whom any house is erected under the Housing Acts, whether with or without financial assistance from the Government, to secure that a fair wages clause (*k*), complying with the requirements of any resolution of the House of Commons for the time being in force with respect to contracts of Government departments, is inserted in all contracts for the erection of the house (*l*). The standard of the houses built for re-housing purposes under the Housing Act, 1930, requires that a dwelling-house must be either (1) a two-storied house with a minimum of 620 and a maximum of 950 superficial feet, or (2) a structurally separate and self-contained flat, or a one-storied house with a minimum of 550 and a maximum of 880 superficial feet, such measurements being made in accordance with rules made by the Minister (*m*). Every house must be provided with a fixed bath in a bathroom, though the Minister may, in a particular case, dispense with this requirement (*l*). [145]

Exercise of Powers Outside Local Authority's Area.—In exercising their powers under the Housing Acts for providing housing accommodation for the working classes, local authorities are not limited to their own area, but may go outside it (*n*). Where any housing operations under Part III. of the Housing Act, 1925, are being carried out by a local authority outside their area, the authority, subject to the approval of the Minister, have power to execute any works which are necessary for the purposes, or are incidental to the carrying out of the operations, subject to entering into agreements with the council of the county or district in which the operations are being carried out as to the terms and conditions on which any such works are to be executed (*o*).

Where housing operations are carried out by a local authority outside their area, and for the purposes of the operations public streets or roads have been constructed and completed by that authority, the

(*f*) Act of 1925, s. 57 (2); 13 Statutes 1035.

(*g*) *Ibid.*, s. 135; 13 Statutes 1070.

(*h*) *Ibid.*, s. 57 (4); *ibid.*, 1035.

(*i*) *Ibid.*, s. 107; *ibid.*, 1061.

(*k*) See title FAIR WAGE CLAUSE.

(*l*) Act of 1935, s. 94.

(*m*) Act of 1930, s. 37 (23 Statutes 425); Housing, etc., Act, 1923, s. 1 (2) (13 Statutes 985). See also M. of H. Circular 520, para. 22.

(*n*) Act of 1925, s. 57 (1) (13 Statutes 1034), as repealed in part by s. 69 and amended by s. 20 (2) of the Act of 1935.

(*o*) *Ibid.*, s. 62 (*ibid.*, 1038); as amended by Sched. V. to Act of 1930 (23 Statutes 442).

liability to maintain the streets or roads vests in the highway authority (*p*) of the area in which the operations were carried out, unless that council are, or on appeal the Minister is, satisfied that the streets or roads have not been properly constructed in accordance with the plans and specifications approved by the Minister (*p*). Where a habitation certificate from the council of the borough or district in which the houses are situate is required under any local Act or bye-law, such a certificate is not necessary in respect of any of the houses which were constructed in accordance with the plans approved by the Minister (*p*). These provisions apply to housing operations carried out or to be carried out under the Housing Act, 1925, or under any enactment repealed by that Act (*q*). [146]

Power of County Councils, etc., to Provide Houses for their Employees (*r*).—A county council may provide dwelling-houses for persons in the employment of, or paid by, the county council or a statutory committee thereof, and for that purpose a county council may be authorised to acquire or appropriate land in like manner as a housing authority. This power also extends to a mental hospitals board. [147]

Amenities.—A local authority, in preparing any proposals for the provision of houses or in taking any action under the Housing Acts, must have regard to the beauty of the landscape or countryside and the other amenities of the locality, and the desirability of preserving existing works of architectural, historic, or artistic interest, and must comply with such directions, if any, as may be given to them concerning these matters by the Minister (*s*). [148]

Relaxation of Bye-Laws.—The provisions of building bye-laws do not apply to new buildings or public streets or roads which are constructed, in pursuance of housing operations, by a local authority or county council or by a housing association in accordance with plans and specifications approved by the Minister, in so far as those provisions are inconsistent with the plans and specifications (*t*), and, notwithstanding the provisions of any other Act, any public street or road so constructed may be taken over and thereafter maintained by the local authority or the county council as the case may be (*u*).

In an area where there is such inconsistency between the bye-laws and the plans and specifications approved by the Minister, any proposals for the erection of houses or the laying out and construction of streets which do not form part of housing operations may, notwithstanding those provisions, be carried out if the local authority are, or on appeal the Minister is, satisfied that they will involve departures

(*p*) L.G.A., 1929, Part III.; 10 Statutes 903.

(*q*) Act of 1925, s. 109 (13 Statutes 1062), as amended as indicated in note (*o*), and L.G.A., 1929, s. 30; 10 Statutes 904.

(*r*) Act of 1925, s. 72; 13 Statutes 1042. See *post*, p. 74. See also County Councils (Assisted Schemes for the Housing of Employees) Regulations, 1920 (S.R. & O., 1920, No. 336), and Amending Regulations of 1924 (S.R. & O., 1924, No. 3), printed as amended at p. 3382 of Lumley's Public Health, 10th ed.

(*s*) Act of 1930, s. 38; 23 Statutes 425. See title AMENITIES.

(*t*) These provisions do not apply to the relaxation of bye-laws in the case of a building scheme promoted by a private person. *Bean (William) & Sons v. Flaxton R.D.C.*, [1929] 1 K. B. 450, Digest (Supp.).

(*u*) Act of 1925, s. 99 (1) (13 Statutes 1057), as amended by the Fifth Schedule to Act of 1930 (23 Statutes 442).

from the bye-laws only to the like extent as in the case of the plans and specifications so approved, and that, where such plans and specifications have been approved subject to any conditions, the like conditions will be complied with in the case of proposals made in these circumstances (a). [149]

Supply of Water and Gas by Companies.—Any commissioners of waterworks, water companies, gas companies, and other corporations, bodies and persons having the management of any waterworks or gasworks, may, in their discretion, furnish supplies of water or gas for houses provided by a housing authority, either without charge or on such other favourable terms as they think fit (b). Clauses inserted in the leases of houses owned by the authority which prevent the supply of gas by gas undertakers (other than local authorities) to a house are void, but the insertion in any instrument relating to any premises of provisions regulating the position in which fittings used in connection with a supply are to be placed is not unlawful (c). [150]

Water Rights.—A local authority or a county council may, notwithstanding anything in sect. 327 or sect. 332 of the P.H.A., 1875 (d), but subject to sect. 52 of that Act (e), be authorised to abstract water from any river, stream, or lake, or the feeders thereof, whether within or without the area of the local authority or the county, for the purpose of affording a water supply for houses provided under the Housing Acts, and may do all such acts as may be necessary for affording a water supply to such houses subject to a prior obligation of affording a sufficient supply of water to any houses or agricultural holdings or other premises that may be deprived of it by such abstraction, in like manner and subject to the like restrictions as they may be authorised to acquire land for the purposes of Part III. of the Housing Act, 1925 (f). But no water may be abstracted which any local authority, corporation, company, or person are empowered by Act of Parliament to impound, take, or use for the purpose of supply within any area, and no water the abstraction of which would, in the opinion of the Minister, injuriously affect the working or management of any canal or inland navigation. Any expenses so incurred by a local authority in acquiring water rights in connection with provided houses must be treated as part of the expenses of providing those houses (f). [151]

Development of Land.—The powers of local authorities in this respect will be found in sect. 59 of the Housing Act, 1925 (g), which allows a local authority who have acquired or appropriated land for the purposes of Part III. of the Housing Act, 1925, without prejudice to any of their other powers under the Housing Acts to deal with it in four different ways. (i.) They may lay out and construct public streets or roads and open spaces on the land. This is the only course which does not require the Minister's consent. (ii.) With the consent of the Minister they may sell or lease the land or part of it to any person for the purpose and under the condition that he will erect and maintain

(a) Act of 1925, s. 90 (2), as amended as indicated in note (u).

(b) *Ibid.*, s. 79; 13 Statutes 1045.

(c) Gas Undertakings Act, 1934, s. 27; 27 Statutes 324.

(d) 18 Statutes 759, 762.

(e) *Ibid.*, 648.

(f) Act of 1925, s. 108 (18 Statutes 1061), as amended by Sched. V. to the Act of 1930 (28 Statutes 442).

(g) 13 Statutes 1036.

thereon such number of dwelling-houses suitable for the working classes as may be fixed by the authority in accordance with plans approved by them, and when necessary will lay out and construct public streets or roads and open spaces on the land, or will use the land for purposes which, in the opinion of the authority, are necessary or desirable for or incidental to the development of the land as a building estate in accordance with plans approved by the authority, including the provision, maintenance, and improvement of houses and gardens, factories, workshops, places of worship, places of recreation and other works or buildings for, or for the convenience of, persons belonging to the working classes, and other persons. (iii.) With the consent of the Minister, they may sell or exchange the land, or a part of it, for land better adapted for those purposes, either with or without paying or receiving any money for equality of exchange (*h*). (iv.) With the consent of the Minister the authority may also sell or lease any houses on the land or erected by them on the land, subject to such covenants and conditions as they may think fit to impose either in regard to the maintenance of the houses as dwelling-houses for the working classes or otherwise in regard to the use of the houses, and upon any such sale they may, if they think fit, agree to the price being paid by instalments or to a part being secured by a mortgage of the premises (*h*).

Where a local authority sell or lease land under sect. 59 of the Act of 1925, they may contribute under sub-sect. (2) towards the expenses of the development of the land and the laying out and construction of the streets thereon, subject to the condition that the streets are dedicated to the public. Land and houses so leased or sold must be leased or sold at the best price or for the best rent that can reasonably be obtained, having regard to any conditions imposed, and any capital money received in respect of any such transaction must be applied in or towards the purchase of other land for the purposes of Part III. of the Housing Act, 1925, or with the consent of the Minister to any purpose, including the repayment of borrowed money, to which capital money may properly be applied (*i*). For these purposes "sale" includes sale in consideration of a chief rent, rentcharge, or other similar periodical payment, and "sell" has a corresponding meaning (*k*).
[152]

Enforcement of Covenants.—Where a local authority have sold or exchanged land acquired by them for housing purposes, and the purchaser of the land or the person taking the land in exchange has entered into a covenant with the local authority concerning the land, or where an owner of land has entered into a covenant with the local authority concerning the land for the purposes of any of the provisions of the Housing Acts, the authority has power to enforce the covenant against the persons deriving title under the covenantor, notwithstanding that the authority are not in possession of or interested in any land for the benefit of which the covenant was entered into, in like manner and to

(*h*) Act of 1925, s. 59 (1) (13 Statutes 1086), as amended by Part II. of Sched. VI. to Act of 1935. Cf. L.G.A., 1933, s. 165 (26 Statutes 397). Ss. 128 to 132 of the Lands Clauses Consolidation Act, 1845 (which relate to the sale of superfluous land) do not apply to the sale of land acquired under Part III. of the Act of 1925. See the Act of 1935, s. 71.

(*i*) Act of 1925, s. 59 (3); 13 Statutes 1087.

(*k*) *Ibid.*, s. 59 (4).

the like extent as if they had been possessed of or interested in such land (l). [153]

Conditions on Sale of Houses.—If any dwelling-house, building, land or dwelling in respect of which a local authority is required to keep a Housing Revenue Account (m) is sold by the authority, with the consent of the Minister, he may in giving his consent impose such conditions, and may reduce the amount of any Exchequer contribution payable to the authority, or of any of the contributions referred to in Part III. of the Fourth Schedule of the Housing Act, 1935, payable by the local authority, as he thinks just (n). [154]

HOUSING IN RURAL AREAS

Supervision by County Council.—For the purpose of Part IV. of the Housing Act, 1930 (which relates to the provision of houses in rural districts), the county council, though not a housing authority, are required as respects each rural district within the county, to have constant regard to the housing conditions of persons of the working classes, the extent to which overcrowding or other unsatisfactory housing conditions exist, and the sufficiency of the steps which each R.D.C. have taken, or are proposing to take, to remedy those conditions, and to provide further housing accommodation (o). Other powers may be transferred to county councils, for they may agree with the council of any rural district within the county for the purpose of assisting them in the performance of their duties under Part III. of the Housing Act, 1925, for the exercise by the county council of all or any of the powers of the R.D.C. (p.) An agreement of this kind may contain such provisions with regard to the expenses to be incurred by the county council, including the raising of loans to meet them, and with regard to the vesting in the R.D.C. of any houses built by the county council under the agreement, and such other incidental and consequential provisions as the councils think proper; and for the purpose of any such agreement the county council are to be deemed to be a local authority for the purposes of Part III. of the Acts of 1925 and 1930. Subject to the provisions of any such agreement, Government contributions are payable under Part III. of the Housing Act, 1930, to that one of the councils by which re-housing accommodation available for displaced persons is provided, notwithstanding that the operations in consequence of which those persons were displaced were initiated or carried out by the other council (p).

Every R.D.C. must furnish to the county council, at such intervals as the county council may direct (not being in any case less than one year), such information regarding the matters to which it is the duty of the county council to have regard (q), as the county council may reasonably require for the purpose of enabling them to carry out their duties (r).

The provisions under which a county council assist an R.D.C. by contributing towards housing expenses are set out in the title HOUSING SUBSIDIES, *post*, p. 102. [155]

(l) Act of 1935, s. 78.

(n) Act of 1935, s. 53.

(o) Act of 1930, s. 32; 23 Statutes 422.

(p) Act of 1930, s. 33.

(r) Act of 1930, s. 32 (2); 23 Statutes 422.

(m) See *post*, p. 82.

(q) See *supra*.

Power of Minister of Health to Assist R.D.Cs.—Under sect. 33 of the Act of 1935, the Minister of Health with the approval of the Treasury is to appoint a committee, called the Rural Housing Committee. The duty of the Committee is to make recommendations to the Minister under this section. The Minister is given power by the section, on the recommendation of the Committee, to render financial assistance to R.D.Cs. in providing, with his approval, new housing accommodation required for members of the agricultural population (*s*) for the purpose of the abatement of overcrowding in the rural district. Such assistance is conditional upon contributions being also made by the local authority concerned (*t*). Contributions must also be made by the county council (*u*). The amount of the contribution which the Minister may undertake to make, and make, may vary from £2 to £8 per house, payable annually for a period of 40 years. The amount of the county council's contribution is £1 per house payable for a similar period (*v*). The amount of the local authority's contribution is a sum payable by equal annual instalments for a period of 60 years (*a*) equivalent to £1 per house per year for a period of 40 years (sect. 34 (2) (*c*)).

Sect. 37 (1) of the Act of 1935 also extends until 1938 certain existing statutory provisions (*b*) with regard to the power of local authorities to make grants or loans. [156]

Default of R.D.C.—Special provisions apply to a default in the exercise by an R.D.C. of their housing powers. A county council may cause a public local inquiry to be held (*i.*) in any case where complaint is made to them by the parish council or parish meeting of any parish comprised in a rural district in the county, or by any justice of the peace acting for, or by any four or more local government electors of, any such district, that the district council have failed to exercise their powers under the Housing Acts in any case where those powers ought to have been exercised, or (*ii.*) in any case where the county council are of opinion that an investigation should be made as to whether the council of any rural district in the county have failed in this respect (*c*). If, after the inquiry has been held, the county council are satisfied that there has been such a failure on the part of the R.D.C., they may make an order declaring the R.D.C. to be in default, and transferring to themselves all or any of the powers of the R.D.C. under the Housing Acts with respect to the whole or any part of the district (*c*). If upon representations made to the Minister by any justice of the peace acting for, or by any four or more local government electors of, any rural district, or otherwise, it appears to the Minister that a county council have failed or refused to make an order of this kind in

(*s*) This means "persons whose employment or latest employment is or was employment in agriculture or in an industry mainly dependent upon agriculture, and includes also the dependants of such persons as aforesaid." "Agriculture" includes dairy farming and poultry farming and the use of land as grazing, meadow, or pasture land, or orchard or osier land, or woodland, or for market gardens or nursery ground (*s*. 34 (2) of the 1930 Act, applied by *s*. 97 (1) of the 1935 Act).

(*t*) Act of 1935, *ss.* 34 (1), 40 (1), 41, 4th Sched., Part III., para. 6.

(*u*) Act of 1935, *s.* 34 (3).

(*v*) *S.* 34 (3).

(*a*) The period may be reduced to not less than forty years (*s.* 34 (2)).

(*b*) Housing (Rural Workers) Act, 1926; 13 Statutes 1162; as amended by the Housing (Rural Workers) Amendment Act, 1931; 24 Statutes 370.

(*c*) Act of 1930, *s.* 35 (1); 23 Statutes 423. *S.* 63 of the L.G.A., 1894 (10 Statutes 816), is applied to orders made under this section.

any case where they should have made such an order, or that any such order made by them is defective in that it fails to transfer powers which should have been transferred, or that it does not apply to any part of the district to which it should have applied, the Minister may, if the county council have not made any order, himself make any order which the county council might have made, and if an order made by the county council is a defective order, himself make a supplementary order enlarging the scope of the county council's order in such manner as he thinks fit (*d*). If upon representations made to the Minister by the persons mentioned in the preceding sentence, or otherwise, it appears to him that a county council to whom powers have been transferred under sect. 35 have failed to exercise them, he may cause a public local inquiry to be held, and if, after the inquiry has been held, he is satisfied that the county council have failed in this respect, he may either (*i*.) make an order directing the county council to exercise such powers in such manner and within such time as may be specified in the order, or (*ii*.) make an order rendering any of the powers exercisable by himself (*e*).

Any such order, whether of the county council or the Minister, may be varied or revoked, but without prejudice to the utility of anything previously done thereunder (*f*). When any order is so revoked, such provision as appears to be desirable may be made with respect to the transfer, vesting and discharge of any property, debts or liabilities acquired or incurred by the county council, or by the Minister, in exercising the powers or duties to which the order so revoked related (*g*). [157]

ACQUISITION OF LAND

Under sect. 58 of the Housing Act, 1925 (*g*), as amended by sect. 20 (3), (4) of the Act of 1935, a local authority may (*i*.) acquire any land, including any houses or other buildings thereon, or right over land, as a site for the erection of dwelling-houses for the working classes; (*ii*.) acquire any houses or other buildings which are, or may be made, suitable as dwelling-houses for the working classes, together with any land occupied with them, or any estate or other interest in them; (*iii*.) acquire land for the purpose of the sale or lease of it, with a view to the erection thereon of dwelling-houses for the working classes by persons other than the local authority, or for the purpose of the sale or lease of any part of the land with a view to its use for purposes which in the opinion of the local authority are necessary or desirable for or incidental to the development of the land as a building estate, including the provision, maintenance, and improvement of houses and gardens, factories, workshops, places of worship, places of recreation, and other works or buildings for or for the convenience of the working classes and other persons (*h*). A local authority may,

(*d*) Act of 1930, s. 35 (4); 23 Statutes 424.

(*e*) *Ibid.*, s. 36; *ibid.*

(*f*) *Ibid.*, s. 56; *ibid.*, 433.

(*g*) 13 Statutes 1085.

(*h*) Local authorities are not narrowly restricted to the purposes outlined in paras. (i.), (ii.), (iii.). A much wider interpretation was placed on similar powers in *Connon v. L.C.C.*, [1922] 2 Ch. 283; 35 Digest 215, 603. In this case it was decided that the L.C.C. had power to purchase a public house on one of their estates, with the object of controlling or regulating the traffic in intoxicating liquor on the site, even though the council had no power to carry on the business of licensed

with the consent of and subject to any conditions imposed by the Minister, acquire land for housing purposes, notwithstanding that the land is not immediately required for those purposes, but a local authority cannot purchase land compulsorily for the purposes of Part III. of the Housing Act, 1925, which is not immediately required for those purposes, unless it appears to the Minister that the land is likely to be required for those purposes within ten years from the date on which he confirms the compulsory purchase order (i). [158]

By Agreement.—Land may be acquired by a local authority by agreement in like manner as if the purposes for which it is acquired were purposes of the P.H.A., 1875 (k). [159]

Compulsorily.—A local authority may be authorised to purchase land compulsorily for the purposes of Part III. of the Housing Act, 1925, by means of an order submitted to the Minister and confirmed by him in accordance with the Second Schedule to the Housing Act, 1930 (l). This power does not extend to the compulsory acquisition of any land which is the property of any local authority, or statutory undertakers, having been acquired by the undertakers for the purposes of their undertaking or which at the date of the order forms part of any park, garden or pleasure ground (m), or is otherwise required for the amenity or convenience of any house (n). Where land is purchased compulsorily, the compensation payable in respect of it is assessed in accordance with the provisions of Part II. of the Third Schedule to the Housing Act, 1930 (o), as amended by sect. 90 of the Act of 1935. See also sect. 78 of that Act. [160]

Entry on Land Acquired.—Where a local authority have been authorised by an order to purchase land compulsorily, they may, at any time after serving notice to treat (p), and after giving not less than fourteen days' notice, enter on and take possession of the land or

victualers. "It is reasonable enough that a local authority which is bound to acquire an extensive tract of land for the erection of houses for a large community should have power to acquire any houses or other buildings which are within the area of the boundary selected, and that it should have complete control over this area in order to remove any impediment in the way of complete development of the scheme."—*Per PETERSON, J.*

(i) Act of 1925, s. 58 (3) (13 Statutes 1036), as amended by s. 70 of Act of 1935.

(k) *Ibid.*, s. 63 (13 Statutes 1038). This provision is not affected by L.G.A., 1933—see s. 179 (g) and Sched. VII.; 26 Statutes 404, 509.

(l) *Ibid.*, s. 64 (13 Statutes 1039), as amended by s. 50 of the Act of 1930 (23 Statutes 430). See also the Housing Consolidated Regulations, 1925 (S.R. & O., 1925, No. 860), Part II.; and the Housing Acts (Form of Orders and Notices) Regulations, 1932 (S.R. & O., 1932, No. 354), Forms 18—21.

(m) See *Conron v. L.C.C.*, *supra*, *per PETERSON, J.*, at pp. 291, 292: "Whether a local authority can insist upon taking the whole of a man's land because it cannot otherwise take a part of it is a question which may have to be answered in another case. It may be contended that if a local authority acquire a small portion of a large park for the purposes of the Housing Acts, it cannot . . . take compulsorily the mansion and the rest of the park which are not required for the purposes of the Acts."

(n) Act of 1925, s. 64 (13 Statutes 1039), as amended by s. 50 of the Act of 1930, and s. 72 of the Act of 1935. "Statutory undertakers" means any persons authorised by an enactment, or by an order, rule, or regulation made under an enactment, to contract, work, or carry on a railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water, or other public undertaking (Act of 1935, s. 97 (1)).

(o) 28 Statutes 440.

(p) See title NOTICE TO TREAT.

such part thereof as is specified in the notice, without previous consent or compliance with sects. 84 to 90 of the Lands Clauses Consolidation Act, 1845, but subject to the payment of the like compensation for the land of which possession is taken, and interest on the compensation awarded, as would have been payable if those provisions had been complied with (g). Any person with the written authority of the local authority or the Minister, which states the particular purpose or purposes for which the entry is authorised, may at all times, on giving twenty-four hours' notice to the occupier and owner (if the owner is known) of his intention, enter for the purpose of survey and examination any house, premises or buildings which the local authority are authorised to purchase compulsorily (Act of 1925, sect. 127).

Where a local authority have agreed to purchase land, or have determined to appropriate land, for housing purposes, subject to the interest of the person in possession of it, and that interest is not greater than that of a tenant for a year or from year to year, then at any time after such agreement has been made, or such appropriation has been approved by the Minister, the local authority may, after giving not less than fourteen days' notice to the person so in possession, enter on and take possession of the land or such part thereof as is specified in the notice, without previous consent, but subject to the payment to the person so in possession of the like compensation, with interest thereon, as if the local authority had been authorised to purchase the land compulsorily, and such person had in pursuance of such power been required to quit possession before the expiration of his term or interest in the land, but without the necessity of compliance with sects. 84 to 90 of the Lands Clauses Consolidation Act, 1845 (r). [161]

By Appropriation.—A local authority may, with the consent of the Minister, appropriate to housing purposes any houses or land which may be for the time being vested in them, or at their disposal, subject as respects land vested in them for educational purposes to the provisions of sect. 114 of the Education Act, 1921 (s). [162]

By Gift.—A local authority may accept a donation of land or money or other property for any of the purposes of the Housing Acts; and it is not necessary to enrol any assurances with respect to any such property under the Mortmain and Charitable Uses Act, 1888 (t). [163]

Acquisition from Trustees, etc.—The trustees of any dwelling-houses for the working classes for the time being provided by private subscriptions or otherwise may, with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the houses to the local authority of the borough or district, or make over to them the management of the houses (u). If the Minister after holding a local inquiry, is satisfied that the acquisition of land by a local authority is desirable in the national interest, notwithstanding that it may be part of a royal park, the Commissioners of Crown Lands

(g) Act of 1925, s. 106 (1) (13 Statutes 1060), as amended by Sched. V. to Act of 1930 (23 Statutes 442).

(r) Act of 1925, s. 106 (2), (3) (13 Statutes 1060, 1061), as amended by Sched. V. to the Act of 1930 and Part II. of Sched. VI. to the Act of 1935.

(s) Act of 1925, s. 65; 13 Statutes 1039. See title APPROPRIATION OF LAND.

(t) Act of 1925, s. 114; 13 Statutes 1034.

(u) *Ibid.*, s. 66; 13 Statutes 1039.

may, under and in accordance with the provisions of the Crown Lands Acts, 1829 to 1906, sell or let to the local authority for housing purposes, any part of the land described on the duplicate plans which have been deposited with the Clerk of Parliaments and the Clerk of the House of Commons (v). Where any land proposed to be acquired or appropriated under the Housing Acts, is situate within the distance prescribed by regulations made by the Minister (after consultation with the Commissioners of Works) (a) from any of the royal palaces or parks, the local authority must, before acquiring the land, communicate with the Commissioners of Works, and the Minister must, before authorising the acquisition or appropriation of the land, or the raising of any loan for the purpose, take into consideration any recommendations received from the Commissioners of Works with reference to the proposal (b). [164]

Acquisition from a Body Corporate.—Any body corporate holding land may sell, exchange, or lease the land for the purpose of the erection of dwelling-houses for the working classes at such price, or for such consideration, or for such rent, as having regard to the purpose and to all the circumstances of the case, is the best that can reasonably be obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged or leased for another purpose (c). [165]

Payment of Purchase or Compensation Money by one Local Authority to another.—Any purchase money or compensation payable under the Housing Acts by a local authority in respect of any lands, estate, or interest of another local authority which would ordinarily be paid into court in manner provided by the Lands Clauses Acts, may, if the Minister consents, instead of being paid into court, be paid and applied as the Minister may determine (d). This enactment provides for cases in which the authority selling the land have no special power of sale. [166]

Commons, etc.—Where any order made under the Housing Acts authorises the acquisition or appropriation to any other purpose of land forming part of a common, open space or allotment, the order, so far as it relates to the acquisition or appropriation of such land, is provisional only, and has no effect until confirmed by Parliament, unless it provides for giving in exchange for such land other land, not being less in area, certified by the Minister after consultation with the Minister of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to commonable or other rights, and to the public (e). Before giving any such certificate, the Minister must give public notice of the proposed exchange, and must afford opportunities to all persons interested to make representations and objections in relation thereto, and must, if necessary, hold a local inquiry on the subject (e). Where any such order

(v) Act of 1925, s. 86; 18 Statutes 1039. See also the Forestry (Title of Commissioners of Woods) Order 1924 (S. R. & O., 1924, No. 1370).

(a) See the Housing Consolidated Regulations, 1925, s. 34; S.R. & O., 1925, No. 809.

(b) Act of 1925, s. 104 (13 Statutes 1060), as amended by Sched. V. to the Act of 1930 (23 Statutes 442).

(c) *Ibid.*, s. 78 (2); 13 Statutes 1045. See also s. 57 of the Settled Land Act, 1925; 17 Statutes 893.

(d) *Ibid.*, s. 129 (13 Statutes 1068). Cf. L.G.A., 1933, s. 177 (26 Statutes 403).

(e) Act of 1925, s. 103 (13 Statutes 1059), as amended as indicated in note (b).

authorises such an exchange, the order must provide for vesting the land given in exchange in the persons in whom the common, open space or allotment was vested, subject to the same rights, trusts and incidents as attached to it, and for discharging the part of it acquired or appropriated from all rights, trusts and incidents to which it was previously subject (f). The expression "common" includes any land subject to be inclosed under the Inclosure Acts, 1845 to 1882, and any town or village green (g); "open space" means any land laid out as a public garden or used for the purposes of public recreation, and any disused burial ground; and "allotment" means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act (h). [167]

Ancient Monuments.—The Housing Acts do not authorise the acquisition for housing purposes of land which is the site of an ancient monument or other object of archaeological interest (i). [168]

MANAGEMENT OF HOUSES

General Powers.—The general management, regulation, and control of the dwelling-houses provided by a local authority under Part III. of the Housing Act, 1925, and previous enactments repealed thereby, is vested in and exercised by the local authority (k), and they may make bye-laws, subject to the Minister's confirmation, for the management, use, and regulation of dwelling-houses provided by them (l). The procedure in making these bye-laws, the fines for offences against them, and the production of a copy as evidence, are now governed by sects. 250—252 of the L.G.A., 1933 (m).

Under sect. 51 of the Housing Act, 1935, in relation to all dwelling-houses in respect of which the local authority are required to keep a Housing Revenue Account (n), they must secure that in the selection of their tenants a reasonable preference is given to persons who are occupying insanitary or overcrowded houses, have large families, or are living under unsatisfactory housing conditions. They must also secure that a number of dwelling-houses are reserved for persons whose incomes do not exceed that of an agricultural worker (o), where the authority have received assistance under sect. 1 of the Housing (Rural Workers) Act, 1926, or the Minister has undertaken to pay a contribution under the new sect. 4 (2A) of that Act, which is inserted by sect. 38 (2) of the Housing Act, 1935 (p), except in so far as the demand for housing accommodation in the area of the authority on the part of such persons

(f) Act of 1925, s. 103 (3) (18 Statutes 1059), as amended by the Fifth Schedule to the Act of 1930, and Part II. of Sched. VI. to the Act of 1935.

(g) As to this definition, see the title COMMONS.

(h) Act of 1925, s. 103 (4); 13 Statutes 1059.

(i) *Ibid.*, s. 105; *ibid.*, 1060.

(k) *Ibid.*, s. 67 (1); *ibid.*, 1040. See title HOUSE PROPERTY MANAGEMENT.

(l) *Ibid.*, s. 68 (1); *ibid.* Fines for the breach of these bye-laws, subject to s. 5 of the Criminal Justice Administration Act, 1914, are to be paid to the credit of the fund out of which the expenses incurred under Part III. of the Act of 1925 are defrayed. *Ibid.*, s. 68 (4).

(m) 26 Statutes 440—443.

(n) See *post*, p. 82.

(o) See Housing (Rural Workers) Act, 1926, s. 3 (1) (a); 13 Statutes 1165.

(p) See title RECONDITIONING OF HOUSES.

can be satisfied without such reservation. A number of dwelling-houses equal to the number in respect of which a county council has undertaken to make a contribution (*g*) must also be reserved for members of the agricultural population (*r*). None of these reservations need, however, be made if the demand for housing accommodation in the area of the authority on the part of the members of the agricultural population can otherwise be satisfied. The authority must also make it a term of every letting that the tenant shall not assign, sublet or otherwise part with the possession of the premises, except with their written consent, which they must not give unless it is shown to their satisfaction that no payment other than a rent which is in their opinion a reasonable rent has been, or will be, received by the tenant in consideration of the assignment, sub-letting, or other transaction (*s*).

The tenancy agreement between the authority and the tenant requires most careful drafting. A good precedent sets out the rent, and the day on which it is payable; requires the tenant to pay rates, make good damage, refrain from altering the premises, from erecting sheds, or keeping pigs, without the consent of the authority; refrain from using the premises otherwise than as a private dwelling-house, or carrying on any trade therein, or sub-letting or parting with the possession of them. The tenant is required to permit the officers of the authority to inspect the premises, to keep the interior of the premises in good and clean condition, to cultivate the garden, to pay a deposit of ten shillings, from which deductions may be made by the authority to cover any losses caused by the tenant, and to comply at all times with all reasonable directions and instructions of the authority regarding the use and occupation of the premises. The tenant holds the premises on a weekly tenancy until determined by either party giving notice, to expire on Monday in any week. Notice from the tenant must be given to the rent collector. [169]

Inspection of Houses.—A dwelling-house provided in any area under Part III. of the Housing Act, 1925, or under any enactment repealed by that Act, must at all times be kept open to the inspection of the local authority providing it, or of any officer authorised by them (*t*). A person obstructing any officer of the local authority, or of the Minister, or any person authorised to enter houses, premises or buildings in the performance of anything by the Housing Acts required or authorised to be done, is liable to a fine not exceeding £20 (*u*). [170]

Fixation of Rents.—The local authority may make such reasonable charges for the tenancy or occupation of the dwelling-houses provided by them as they may by regulation determine (*a*). In *Leeds Corporation v. Jenkinson* (*b*), this was held to confer on a local authority a power to determine what are reasonable charges, and to entitle them to differentiate between the conditions on which particular tenancies are granted. It was also held that the restrictive conditions contained in sect. 2 (1) of the Housing (Financial Provisions) Act, 1924 (*c*), operated

(*g*) See *post*, p. 102.

(*r*) Defined in s. 34 (2) of Act of 1930 (23 Statutes 423), see Act of 1935, s. 97 (1).

(*s*) Act of 1935, s. 51 (7).

(*t*) Act of 1925, s. 69; 13 Statutes 1040. See also M. of H. Circular 1138.

(*u*) *Ibid.*, s. 123; *ibid.*, 1066.

(*a*) *Ibid.*, s. 67 (2); *ibid.*, 1040. The words "by regulations" are repealed by the Housing Act, 1935.

(*b*) [1935] 1 K. B. 168; Digest (Supp.).

(*c*) 13 Statutes 995.

only to prevent a local authority making any profit or exacting any total from their tenants beyond a certain sum, and did not import a necessity of fixing uniform rents for the same type of house. This sub-section has been repealed by the Act of 1935. The only limitation on the power of local authorities to fix rents in any manner they see best would appear to be the necessity that they should, in relation to all dwelling-houses and dwellings in respect of which they are required to keep a Housing Revenue Account, observe the following requirements now imposed by sect. 51 (5), (6) of the Act of 1935, viz. that (i.) in fixing rents they must take into consideration the rents ordinarily payable by persons of the working classes in the locality, though they may grant to any tenant such rebates from rent, subject to such terms and conditions as they may think fit, and (ii.) they must from time to time review rents and make such changes, either of rents generally or of particular rents and rebates (if any), as circumstances may require. [171]

Recovery of Possession.—Where a local authority, for the purpose of exercising their powers under the Housing Acts, require possession of any building or part of a building of which they are the owners, then, whatever may be the value or rent of the building or part of the building, they may recover possession thereof under the Small Tenements Recovery Act, 1838 (*d*), as in the cases therein provided for, at any time after the tenancy of the occupier has expired or has been determined (*e*).

Nothing in the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925, as amended by any subsequent enactment, is to be deemed to prevent possession being obtained of any house, possession of which is required for the purpose of enabling a local authority to exercise their powers under the Housing Acts (*f*). [172]

Housing Management Commission.—Provision is made in sect. 25 of the Housing Act, 1935, for the formation by a scheme of the local authority approved by the Minister of a commission to whom would be transferred all or any of the authority's functions under the Housing Acts as to the management, regulation and control, and the repair and maintenance, of working-class houses and other buildings or land provided in connection with such houses. The membership of the commission will be governed by the scheme, but it need not be restricted to members of the authority, and remuneration may be paid to the chairman of the commission, if he is not a member of the authority, or of one of their committees or sub-committees, or of a joint committee. Although the policy of a special board for housing was no doubt influenced by the formation of the London Transport Board, the section does not appear to cover the constitution, by two or more local authorities, of a Joint Housing Management Commission. [173]

FINANCE

Expenses of Local Authorities.—All expenses incurred under the Housing Acts by a local authority in the execution of their powers, are now defrayed under the general provisions in Part VIII. of the L.G.A., 1933 (*g*), but the expenses of an R.D.C. under Part I. or Part II. of the

(*d*) 10 Statutes 324.

(*e*) Act of 1930, s. 59 (2); 23 Statutes 434.

(*f*) *Ibid.*, s. 59 (1) (23 Statutes 434), as amended by Part II. of Sched. VI. to Act of 1935. See also *Parry v. Harding*, [1925] 1 K. B. 111; 38 Digest 216, 505.

(*g*) 26 Statutes 404.

Act of 1925 are to be charged as special expenses on the contributory place for which they were incurred (*h*). The expenses of a county council are to be defrayed as expenses for general county purposes or for special county purposes, as the case may require (*i*). [174]

Borrowing.—A local authority may borrow for the purposes of:

- (i.) Part I. of the Act of 1925, so far as it relates to the execution of repairs and works by local authorities, and to compensation payable for and in respect of obstructive buildings (*h*);
- (ii.) Part III. (Provision of Houses) of the Act of 1925;
- (iii.) Part IV. (Financial Provisions) of the Act of 1925, so far as it authorises loans and advances by local authorities, or the giving of any guarantee by them (*l*); and
- (iv.) Part I. (Overcrowding, Redevelopment and Reconditioning) of the Act of 1935 (*m*).

The general provisions of the L.G.A., 1933, as to the borrowing of money apply, and any loan needs the Minister's sanction. Under sect. 198 and the Eighth Schedule to the Act of 1933 (*n*), a maximum period of 80 years is allowed for loans raised for the purposes of the Housing Acts, other than borrowings by a county council for the purpose of making loans to, or subscribing to the capital of, housing associations (*o*). [175]

By County Councils.—A county council (other than the L.C.C.) may borrow for the purposes of the Housing Acts, other than refunds of rates under sect. 92 (1) (c) of the Act of 1925 on the conversion of a house into self-contained flats (*p*). The general provisions of sect. 195 of the L.G.A., 1933, as to borrowing by a county council, apply. [176]

By Mental Hospitals Boards.—A mental hospitals board may borrow for the provision of houses for their employees (*q*). [177]

For Housing Operations Outside Local Authority's Area.—Where housing operations under Part III. of the Housing Act, 1925, are being carried out by a local authority outside their area, that authority has, subject to the approval of the Minister, power to borrow money for the purpose of defraying any expenses (including, if the Treasury so approve, interest in respect of any period before the completion of the operations or a period of five years from the date of borrowing, whichever period is the shorter, on money so borrowed) incurred by the authority in connection with any works necessary for the purposes of the operations which they are authorised to execute under the Housing Acts, or incidental to carrying them out (*r*). Any order of the Minister, in so far as it relates to the sanction of a loan under these provisions for the payment of interest payable in respect of money borrowed, is provisional only, and is of no effect until confirmed by Parliament (*ibid.*). The council of any county or district in which housing operations are

(*h*) Act of 1925, s. 81 (2); 13 Statutes 1046.

(*i*) *Ibid.*, s. 88; *ibid.*, 1048.

(*k*) *Ibid.*, s. 84; *ibid.*, 1048. See title SLUM CLEARANCE.

(*l*) *Ibid.*, s. 84 (1).

(*m*) Act of 1935, s. 23. See title SLUM CLEARANCE.

(*n*) 26 Statutes 414, 510.

(*o*) "Housing associations" is substituted for "public utility societies" by Part I. of Sched. VI. to the Housing Act, 1935.

(*p*) Act of 1925, s. 85 (1); 13 Statutes 1046. See title FLATS.

(*q*) *Ibid.*, s. 85 (2).

(*r*) *Ibid.*, s. 86 (1) (13 Statutes 1046), as amended by Sched. V. to the Act of 1930 (23 Statutes 442).

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being carried out in this manner have, with the approval of the Minister, power to borrow money for the purposes of any agreement entered into by the council with the local authority under Part III. of the Housing Act, 1925 (*s*). Alternatively, the authority operating outside their area may, subject to the approval of the Minister, advance to the council of any county, borough or district, in which the operations are being carried out, such sums as may by reason of any agreement made with that council be required by that council in connection with the construction of any works which are necessary for the purposes, or are incidental to the carrying out of the operations (*t*). [178]

Loans by Public Works Loan Commissioners.—The Public Works Loan Commissioners may lend to any local authority or county council any money which that authority or council have power to borrow for the purposes of making advances or fulfilling guarantees under sect. 92 of the Act of 1925 for the purpose of increasing housing accommodation (*u*). Where such a loan is made by the Commissioners to a local authority for the purposes of the Housing Acts, or to a county council or mental hospitals board for the purpose of the provision of dwelling-houses for employees, or for the purpose of making advances or fulfilling guarantees, as previously mentioned, the following provisions (*a*) apply : (i.) the loan must be made at the minimum rate allowed for the time being for loans out of the Local Loans Fund, (ii.) if the Minister makes a recommendation to that effect the period for which the loan is made may exceed the period allowed under any enactment limiting the period for which loans may be made by the commissioners, but may not exceed the period recommended by the Minister, or in any case eighty years, (iii.) as between loans for different periods, the longer duration of the loan must not be taken as a reason for fixing higher interest. [179]

Power of County Council to Lend to Local Authorities.—A county council may lend to any authority within their area any money which that authority have power to borrow for the purposes of the Housing Acts, subject to any conditions (including conditions with respect to the borrowing by a local authority from the county council of the money so raised) which the Minister may by general or special order impose (*b*). [180]

Accounts (*c*).—All local authorities for the purposes of Part III. of the Housing Act, 1925, are required by sect. 42 of the Housing Act, 1935, to keep an account (called the Housing Revenue Account) of their income and expenditure in respect of the following :

- (i.) all dwelling-houses and other buildings which have been provided by a local authority at any time after February 6, 1919, under Part III. of the Act of 1925, or under any enactment as to the provision of housing accommodation for the working classes repealed by that Act ;
- (ii.) all land which at any time after that date the authority have acquired or appropriated for the purposes of Part III. of the

(*a*) Act of 1925, s. 80 (2), as amended as indicated in note (*r*).

(*f*) *Ibid.*, s. 93 (13 Statutes 1055), as amended as indicated in note (*r*).

(*u*) See titles FLATS, LOCAL LOANS.

(*a*) Act of 1925, s. 80 (2) (13 Statutes 1051), as amended by s. 75 of Act of 1935.

(*b*) *Ibid.*, s. 94 (*ibid.*, 1056). See also the Housing (Loans by County

Councils) Order, 1925 ; S.R. & O., 1925, No. 733.

(*c*) See Housing Accounts Order (Local Authorities) 1920 (S.R. & O., 1920, No. 487), printed at p. 3383 of Lunley's Public Health, 10th ed.

Act of 1925, or of any housing enactment repealed as previously mentioned, or are deemed to have acquired under Part III. of that Act by virtue of sect. 15 (4) of the Housing Act, 1935, with regard to the purchase of land for purposes of redevelopment ;

- (iii.) all dwellings in respect of which either (1) the authority have received assistance under sect. 1 of the Housing (Rural Workers) Act, 1926 (*d*), or (2) the Minister has undertaken to pay a contribution to the authority under the provision in sect. 38 (2) empowering him to assist an authority executing works under the Act of 1926 in respect of which, if executed by another person, the authority might have made grants under that Act ; and
- (iv.) such other working-class houses as the authority, with the consent of the Minister, may from time to time determine.

[181]

Credits and Debits in Housing Revenue Account.—By sect. 43 of the Act of 1935, a local authority who are required to keep a Housing Revenue Account must carry to the credit of that account the following :

- (i.) income of the authority for each year from rents (exclusive of rates and water charges) in respect of such dwelling-houses, buildings, land, and dwellings in respect of which they have to keep the account (*e*) ;
- (ii.) any Exchequer contributions payable to the authority, or any contributions payable to the authority by the county council, under sect. 34 of the Act of 1930, or under sect. 34 (3) of the Act of 1935, for the year (*f*) ;
- (iii.) any sums payable to the authority for the year by way of assistance under sect. 1 of the Housing (Rural Workers) Act, 1926 ; and
- (iv.) the authority's contributions out of the general rate fund calculated according to the provisions of Part III. of the Fourth Schedule to the Housing Act, 1935. [182]

The authority must debit the account with :

- (i.) the loan charges (*g*) for the year in respect of money borrowed by the authority for the provision of housing accommodation at any time after February 6, 1919, or for the execution of works in respect of which the Minister has undertaken to make an Exchequer contribution under the Housing (Rural Workers) Act, 1926, or in respect of which the local authority have given assistance under that Act ;
- (ii.) rents, taxes and other charges (except rates and water charges) which the authority are liable to pay for the year in respect of those dwelling-houses, buildings, land and dwellings concerning which the authority is required to keep a Housing Revenue Account (*h*) ;

(*d*) See *ante*, p. 73, also title RECONDITIONING OF HOUSES.

(*e*) See *ante*, pp. 79, 80.

(*f*) See *post*, p. 103.

(*g*) "Loan charges" means, in relation to any borrowed moneys, the sums required for the payment of interest on those moneys, and for the repayment thereof either by instalments or by sinking fund—see s. 97 (1) of Act of 1935.

(*h*) See *ante*, p. 82.

- (iii.) the expenditure of the authority in respect of the supervision and management of such dwelling-houses, etc. ;
- (iv.) the contributions, if any, required to be made by the authority for the year to a Housing Repairs Account, or a Housing Equalisation Account (i).

Where any functions of the authority in respect of any dwelling-houses, buildings, land, or dwellings in respect of which the authority are required to keep a Housing Revenue Account are being exercised for the time being by a Housing Management Commission (k), the provisions relating to credits and debits in the Housing Revenue Account have effect subject to such modifications as the Minister may direct (l). Where any property of this nature has been sold or otherwise disposed of, any income of the authority arising from the investment or other use of the proceeds of sale must, unless the Minister otherwise directs, be carried to the credit of the Housing Revenue Account in like manner as if it were income from rents (m).

Any income of the authority arising from an investment or other use of borrowed moneys in respect of which the authority are required to debit loan charges to the Housing Revenue Account, must be carried to the credit of that account in like manner as if it had been income from rents, and where a local authority for Part III. of the Housing Act, 1925, are entitled to any such income, they must keep a Housing Revenue Account, even though they may not be required by sect. 42 of the Housing Act, 1935, so to do (n).

Where it appears to the Minister that amounts in respect of any incomings or outgoings other than those mentioned above ought properly to be credited or debited to a Housing Revenue Account, or that amounts in respect of any of the incomings and outgoings which ought properly to have been credited or debited thereto have not been so credited or debited, or that any amounts have been improperly credited or debited to that account, he may give directions for the appropriate credits or debits to be made, or for the rectification of the account, as the case may require (o). [183]

Disposal of Balance in Housing Revenue Account.—At the end of each financial year any surplus shown in a Housing Revenue Account must, subject to application, (if the local authority so determine) in repaying to the general rate fund any additional contributions credited to the Housing Revenue Account in any of the four last preceding financial years, be carried forward in the account to the next financial year (p).

There is one qualification to this general rule. Any surplus shown on March 31, 1940, or any fifth succeeding year, and not required for application as stated above, may be applied as the local authority with the consent of the Minister may determine, in whole or in part, in either of the following ways, or partly in one way and partly in the other : (i.) by transferring it to the Housing Repairs Account, or (ii.) by carrying it forward in the Housing Revenue Account to the next financial year (q). In so far as the surplus is not so applied, part must be paid to the Minister, and the remainder carried to the general rate fund, in

(i) See post, pp. 85, 86.

(k) See title HOUSE PROPERTY MANAGEMENT.

(l) Act of 1935, s. 43 (2).

(n) *Ibid.*, s. 43 (4).

(p) *Ibid.*, s. 44 (1).

(q) *Ibid.*, s. 44 (2). See title HOUSING SUBSIDIES.

(m) *Ibid.*, s. 43 (3).

(o) *Ibid.*, s. 43 (5).

proportion to the amount credited to the Housing Revenue Account under sect. 43 of the Housing Act, 1935, during the period of five years ending on the date on which the surplus is shown, in respect of the Exchequer contributions on the one hand, and the amount so credited in respect of the contributions specified in Part III. of the Fourth Schedule to the Act of 1935, less any amount repaid to the general rate fund under the provisions outlined above, on the other hand (r).
[184]

Housing Repairs Account.—Every local authority who are required to keep a Housing Revenue Account must, for the purpose of equalising as far as practicable the annual charge to their revenue in respect of the repair and maintenance of dwelling-houses, buildings and dwellings in respect of which that account is kept, keep an account (called the "Housing Repairs Account"), and must, in each financial year, carry to the credit of that account from the Housing Revenue Account in respect of each dwelling-house, etc., such amount as they may think proper, not being less than an amount equal to 15 per cent. of the annual rent (exclusive of any amount included therein in respect of rates or water charges), and such amount as may be necessary to make good any deficit shown in the Housing Repairs Account at the end of the last preceding financial year (s).

If the local authority are, on August 2, 1935, keeping a repairs fund or account in respect of any of the property as to which a Housing Revenue Account must be kept, they must carry to the credit of the Housing Repairs Account any moneys it may contain, and in so far as that fund or account relates only to repairs, it must be closed (t).

Moneys standing to the credit of the Housing Repairs Account can be applied only in meeting the expenses of repairing and maintaining properties in respect of which the Housing Revenue Account is to be kept (u).

If at any time it appears to the Minister (after consultation with the local authority) that the moneys standing to the credit of a Housing Repairs Account are more than sufficient for the purposes for which the account is to be kept, or that it is no longer necessary for the account to be kept, he may give such directions as he may think proper for the reduction of the amounts to be credited to the account, or the suspension of the carrying of credits thereto, or for the closing of the account and the application of any moneys standing to the credit thereof, as the case may be (v). [185]

Housing Equalisation Account.—Every local authority who are required to keep a Housing Revenue Account must, for the purpose of equalising the income of the Housing Revenue Account derived from Exchequer contributions and contributions from other local authorities over any period during which loan charges required to be debited to that account will be payable, keep an account (called the "Housing Equalisation Account"), and must carry to the credit of that account from the Housing Revenue Account such sums, and must apply the sums so credited in such manner, as may be prescribed by the Minister by regulations (a). Regulations have not yet (November, 1935) been made.

(r) Act of 1935, s. 44 (2). See title HOUSING SUBSIDIES.

(s) *Ibid.*, s. 45 (1).

(t) *Ibid.*, s. 45 (2).

(u) *Ibid.*, s. 45 (3).

(v) *Ibid.*, s. 45 (4).

(a) *Ibid.*, s. 46 (1); Act of 1930, s. 57 (23 Statutes 434).

If the local authority are on August 2, 1935, keeping an Equalisation Fund or Account relating to any matters in respect of which the Housing Revenue Account is to be kept, they must carry to the credit of the Housing Equalisation Account any moneys in that fund or account in respect of those matters, and if that fund or account relates only to those matters, it must be closed (*b*).

If the authority satisfy the Minister that it is not necessary for them to open a Housing Equalisation Account or, after they have opened such an account, that it is no longer necessary for the account to be kept open, he may give such directions as he may think proper for relieving the authority from the duty to keep such an account, or for the closing of the account, and for the application of any moneys standing to its credit as the case may be (*c*). [186]

Temporary Application of Moneys in Housing Accounts.—Any credit balances in the Housing Repairs Account or the Housing Equalisation Account, which are not required for the time being for the purposes for which they will ultimately be applicable, may be used for the purpose of any statutory borrowing power (*d*). So far as they are not so kept open, they must be invested temporarily in statutory securities (*e*) (other than securities of the authority), and the income arising from such investment must be credited to this account (*f*).

The following conditions apply to the utilisation of moneys in this manner: (1) the moneys so used must be repaid to the account out of the general rate fund in the same manner as a loan raised under the statutory borrowing power would be repayable, subject to the proviso that the authority must repay to the account the moneys so used, or the balance outstanding, as and when it is required for the purposes of the account; (2) in the accounts of the general rate fund an amount equal to interest on any moneys so used and for the time being not repaid must be credited to the account and debited to the undertaking or purpose with reference to which the moneys are so used; (3) the statutory borrowing power is to be deemed to have been exercised by such use as fully in all respects as if a loan of the same amount had been raised in exercise of this power, and the provisions of any enactment as to the re-borrowing of sums raised under the statutory borrowing power apply accordingly (*g*). [187]

LONDON

The only provisions of Part III. of the Housing, Town Planning, etc., Act, 1909, which are in force in London are sects. 68 (4) and 70 of the Act (*h*), conferring on the county M.O.H. the same powers of entry for the purpose of his duties as the M.O.H. of a metropolitan borough. In the application of sect. 2 of the Housing, etc., Act, 1923 (*i*), to London outside the City, the L.C.C. are to be the authority, and they have power to require district surveyors under the London Building Act, 1930, to perform such duties as are necessary.

(*b*) Act of 1935, s. 46 (2).

(*d*) *Ibid.*, s. 47 (1).

(*e*) By sect. 97 (1), "statutory security" has the meaning assigned to it by s. 218 of L.G.A., 1933 (26 Statutes 424), and covers trustee securities and any security, not payable to bearer, of a local authority.

(*f*) Act of 1935, s. 47 (1).

(*h*) 10 Statutes 840, 847.

(*c*) *Ibid.*, s. 46 (3).

(*g*) *Ibid.*, s. 47 (2).

(*i*) 13 Statutes 980.

The Housing Act, 1925, as amended by the Housing Act, 1930, applies to London with the modifications shown below. For London provisions as to bye-laws respecting houses divided into separate tenements, see title **FLATS**.

For the purposes of Part III. of the 1925 Act, the L.C.C. may exercise the same powers, whether of contract or otherwise, as in the execution of their duties under the Metropolis Management Acts, 1855 to 1893, and the City Corporation may exercise the same powers as under the City of London Sewers Acts, 1848 to 1897 (*k*). For the purposes of Part III., the L.C.C., Common Council of the City and the metropolitan borough councils, have the same power to acquire land by agreement as other local authorities (*l*), and sects. 175—178 of the P.H.A., 1875 (*m*), are extended to London. But this does not cover a compulsory purchase of land, the power for which is given by sect. 64 of the Act of 1925, as amended by sect. 50 of the Act of 1930 and sect. 72 of the Act of 1935. [188]

Under sect. 80 of the Act of 1925 (*n*), the local authorities for the purposes of Part III. are the Common Council of the City, the L.C.C. as to the provision of houses outside the county and the metropolitan borough councils as to their respective boroughs, but under sect. 74 of the Housing Act, 1935, the L.C.C., concurrently with a metropolitan borough council, are a local authority for the purposes of Part III. of the 1925 Act so far as regards the provision within a metropolitan borough of housing accommodation (1) for persons of the working classes displaced by any action taken by the county council or a borough council under the 1930 Act for dealing with a clearance area or for the demolition of insanitary houses, (2) for the abatement of overcrowding, or (3) rendered necessary by displacements occasioned by action taken by the L.C.C. or a metropolitan borough council under Part I. of the Act of 1935 which relates to overcrowding, redevelopment and reconditioning. Sect. 74 (2) of that Act also creates the L.C.C. a local authority concurrently with the borough councils, for so much of the county as is outside the City, for the purposes of sect. 57 (1) (b), (c), (d), of sect. 57 (2) so far as it relates to houses converted or acquired by a local authority, and of sect. 58 (1) (b), (c) of the Act of 1925. These powers relate to the conversion of buildings into dwelling-houses, the acquisition of houses suitable for this purpose, the alteration, enlargement, repair or improvement of houses or buildings, the acquisition of them if they are or can be made suitable as dwelling-houses for the working classes, and the acquisition of land for sale or lease to other persons. [189]

Sect. 80 of the Act of 1925 provides further that, where the L.C.C. are satisfied that there is land in a metropolitan borough suitable for housing, the council may submit a scheme to the Minister for the development of such land to meet the needs of districts outside the borough (*o*). Land may be so dealt with whether built on or not; and with the consent of the borough council a scheme may be made to meet the needs of the borough in which the land is situate (*o*).

The Minister may by order transfer (*p*) to the L.C.C. the powers and duties of a metropolitan borough council under Part III. of the Act of

(*k*) Act of 1925, s. 57 (3); 13 Statutes 1035.

(*l*) *Ibid.*, s. 63; *ibid.*, 1038.

(*m*) 18 Statutes 699—702.

(*n*) *Ibid.*, 1045.

(*o*) See proviso (ii) to s. 80 (2) of the Act of 1925, printed as amended by s. 38 of L.C.C. (General Powers) Act, 1926, at 18 Statutes 1046.

(*p*) Act of 1925, s. 80 (2) (b) (ii); 18 Statutes 1046.

1925 or *vice versa*, but this provision does not apparently extend to the county council when acting as a local authority under sect. 74 of the Act of 1935, and seems also to be in part superseded by sect. 85 of that Act as to default. The L.C.C., the Common Council and any borough council may enter into agreements for housing operations under Part III. of the Act of 1925 and for the apportionment of expenses thereunder (g).

As to the mode of defraying the expenses of London authorities under Parts I. to III. of the Housing Act, 1925, see sects. 81 and 83, and as to borrowing see sect. 84 of that Act (r), as extended to Part I. of the Housing Act, 1935, by sect. 23 of that Act.

The powers under sect. 92 (Advances for Increasing Housing Accommodation) are exercisable in London by the L.C.C. as local authority to the exclusion of any other local authority (s). The powers of the Minister as to the approval of plans under sect. 99 (1) (Relaxation of Bye-laws) of the Act of 1925 (t) may not be exercised as regards the administrative county of London unless the L.C.C. are consulted. Sect. 100 (1)—(4) (Provisions as to Bye-laws relating to New Streets) does not extend to London, but under sect. 100 (5) the L.C.C. may, with the consent of the Minister, suspend, alter or relax bye-laws and enactments relating to the formation or laying-out of new streets, or the construction of sewers and dwellings. Sect. 130 of the Act of 1925 (a), gives the L.C.C. a special power to appoint, with the consent of the Minister, medical officers for the purposes of the Act. [190]

The Housing (Rural Workers) Act, 1926, does not extend to London; see sect. 9.

The Housing Act, 1930, applies to London with the following modifications. Sect. 16 (b), as amended by sect. 13 of the L.C.C. (General Powers) Act, 1932 (c), and in part repealed by the Housing Act, 1935, contains special provisions as to the application of Part I. to London. Within the City of London the Common Council are the local authority. With regard to *improvement areas*, other than in the City, the L.C.C. determine the steps to be taken, and the metropolitan borough council carry out the scheme. The Minister may on representation by the L.C.C. transfer to the council the powers and duties of a borough council in default (sub-sect. (8)). A borough council, however, may be a local authority for an improvement area if the area contains not more than ten houses (sub-sect. (4)), but the number of houses that an area may contain is not so limited where the L.C.C. deal with it (L.C.C. (General Powers) Act, 1932, sect. 13). With regard to *clearance areas*, both the L.C.C. and the borough councils are authorities, but borough councils must give the L.C.C. two months' notice before declaring, and that council may in the meantime declare their intention of dealing with the area (sub-sect. (5)). An official representation made to the L.C.C. in respect of areas of not more than ten houses must be forwarded by the county council to the borough council unless the county council decide to deal with it under their own powers. The L.C.C. may construct new streets and sewers

(g) Act of 1925, s. 80 (2) (c) and 80 (3). Printed as amended by s. 38 of the L.C.C. (General Powers) Act, 1926, at 13 Statutes 1046. Amended also by Sched. V. to the Housing Act, 1930.

(r) 13 Statutes 1046—1046.

(s) Act of 1925, s. 92 (5); 13 Statutes 1055.

(t) 13 Statutes 1057.

(b) 23 Statutes 407.

(a) *Ibid.*, 1068.

(c) 25 Statutes 811.

in improvement and clearance areas, but streets when completed are repairable by the borough council (sub-sect. (6)). London local authorities are empowered to make agreements as to action and expenses under Part I. of the Act of 1930 (sub-sect. (8)). Sub-sect. (9) is repealed by the Housing Act, 1935, and sub-sect. (10) places borough councils under an obligation to furnish information to the county council to enable the county council to carry out their duties under Part I. [191]

The local authorities for Part II. of the Act of 1930 (Repair or Demolition of Insanitary Houses) are the metropolitan borough councils and the Common Council of the City; see sect. 24 of that Act (d).

The local authorities for Part III. of the Act of 1930 are the Common Council as regards the City and, as to the remainder of the county, the metropolitan borough councils and the L.C.C., but the L.C.C. are to review housing conditions and submit proposals and quinquennial statements to the Minister after consulting the borough councils (sect. 31).

Part IV. of the Act of 1930 is not applicable to London, there being no rural district therein.

Sect. 48 of the Act (e) provides for the making of agreements by the L.C.C. and authorities outside London for the provision of houses, outside the county by either authority to meet the special needs of the other authority. As to expenses of the L.C.C. being expenses for general county purposes, see sect. 49. [192]

Turning to the Housing Act, 1935, the local authorities for Part I. (Overcrowding, Redevelopment and Reconditioning) are prescribed by sect. 21 of the Act. Excluding overcrowding (f), the local authorities for sects. 18—19 as to redevelopment are the Common Council of the City, and outside the City the L.C.C. exclusively (sect. 21 (5)). But a borough council may inform the L.C.C. that they propose to deal with an area in the borough as a redevelopment area, and if the L.C.C. notify the borough council that they do not intend to deal with the area, or part of it, or do not notify within two months that they intend to deal with the area, or part of it, either as a redevelopment area or in some other way, the borough council become the authority for the redevelopment of the area, unless the Minister decides that it is not a suitable area for them to deal with, or if they do not submit a redevelopment plan within two years. As respects the remaining provisions in Part I. of the Act of 1935, the local authorities are for the City, the Common Council, and as respects any other part of London partly the L.C.C. and partly the metropolitan borough council (sect. 21 (1)).

The financial provisions in Part III. of the Act of 1935, and in particular the obligation to open a Housing Revenue Account, a Housing Repairs Account and a Housing Equalisation Account, extend to all housing authorities in London, except those provisions which apply only to rural districts. In the application to London of Part III. of the Act, and Parts II. and III. of the Fourth Schedule, the modifications specified in Part IV. of that Schedule are, by sect. 50, to be made.

Various provisions of the Housing Acts, 1925 to 1935, of minor importance are also adapted in their application to local authorities in London. [193]

In addition, various L.C.C. (General Powers) Acts have conferred

(d) 23 Statutes 416.

(f) See title OVERCROWDING.

(e) *Ibid.*, 430.

housing powers as under: (1) power to L.C.C. to exchange land in connection with housing sites with the approval of the Minister (Act of 1907, sect. 62) (g); (2) power to L.C.C. to lease houses and cottages provided under the Housing of the Working Classes Acts, 1890—1909 (Act of 1912, sect. 28) (h); (3) power to L.C.C. to contribute under the Housing Acts to the cost of property acquired for education purposes, and which is unfit for human habitation or dangerous or injurious to health; borough councils may contribute (Act of 1915, sect. 63) (i); (4) power to L.C.C. and borough councils to provide in connection with housing accommodation buildings for commercial purposes, subject to the consent of the Minister and, if exercised outside the county, also to the consent of the council of the area concerned (Act of 1927, sect. 60) (k); (5) power to enable the Kensington borough council in dealing with improvement areas to close parts of houses and to prohibit the use of basement rooms as living rooms (Act of 1933, sect. 70) (l). [194]

- (g) 11 Statutes 1286.
 (h) *Ibid.*, 1333.
 (i) 26 Statutes 600.

- (h) *Ibid.*, 1320.
 (k) *Ibid.*, 1396.

HOUSING ASSOCIATIONS

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See also titles: HOUSING; HOUSING SUBSIDIES.

Introduction.—Public Utility Societies and Housing Associations (a) constitute the response of public-spirited enterprise to the lead given by the Government since 1919 to secure the better housing of the working class population. They range from almost purely philanthropic institutions to experiments in housing made by industrial undertakings, the object of them all being to secure good accommodation at a rent which the tenant can afford. The advantages to a local authority of promoting or seeking the assistance of a housing association depend largely upon local conditions, but experience shows that cheaper accommodation can frequently be provided with greater expedition through the medium of such associations, particularly in schemes for

(a) The expression "housing association" covers a wider class than the expression "public utility society," cf. Housing Act, 1935, s. 26, and Housing, etc., Act, 1923, s. 3 (2); 13 Statutes 988.

the reconditioning of existing houses. An active housing association is often found to be of value in educating local opinion (b). [195]

Public Utility Societies under the Housing, etc., Act, 1923 (c).—Under sect. 3 of the Act of 1923, as amended and extended by sects. 1, 2 of the Housing (Financial Provisions) Act, 1924 (d), the M. of H. could make the same contributions towards the expenses of a public utility society as he is authorised to make to a local authority, if the society satisfied him that the types of house to be constructed complied with sect. 1 of the former Act and that they would be completed before October 1, 1939. But the payment of grants under these provisions, unless the scheme was submitted to the Minister before December 7, 1932, was discontinued by the Housing (Financial Provisions) Act, 1933 (e), a new provision having been included in sect. 29 of the Housing Act, 1930 (f), but this section is repealed by sect. 27 (6) of the Housing Act, 1935, without affecting liabilities under existing undertakings. [196]

Housing Associations under the Housing Acts, 1925 to 1935.—Sect. 26 of the Act of 1935 applies the unrepealed provisions of the Acts of 1925 and 1930 relating to public utility societies to housing associations by substituting references to housing associations for references to public utility societies in the earlier Acts. The force of this important amendment is to extend the assistance provided under both the Acts of 1925 and 1935 to societies, trustees or companies whose objects include not merely the construction but the *improvement and management* and even the *encouragement of schemes* for the construction or improvement of houses for the working classes. In order to be eligible for assistance under the Acts, housing associations must either not trade for profit, or must limit themselves to a maximum rate of interest (fixed by the Treasury) on their capital (g). But they need not, like public utility societies under the Act of 1925, be registered under the Industrial and Provident Societies' Acts (h). [197]

Powers of the Minister of Health.—Under sect. 27 of the Housing Act, 1935, the M. of H. instead of dealing directly with the society, acts through the local authority who submit the proposed arrangements with the society to him for his approval. The arrangements must be embodied in a specific agreement under seal. If he approves he may then make the same contribution to the local authority as would be applicable if the local authority were providing the houses and the local authority must hand over not less than this contribution to the association, and may supplement it (i). If the Minister is satisfied that the association have failed to carry out their part of the arrangements made with the local authority, he may reduce, suspend or discontinue the contribution to the local authority and the local authority may follow suit (i). [198]

(b) For an interesting article on public utility societies, see Hill's Complete Law of Housing (2nd ed.), Introduction, Chap. V., by A. T. Pike.

(c) For regulations and orders generally dealing with public utility societies, see the Public Utility Societies Regulations, 1925 (S.R. & O., 1925, No. 287), and the Housing Accounts Order (Societies and Trusts) 1920 (S.R. & O., 1920, No. 688),

(d) 13 Statutes 992.

(e) 26 Statutes 646.

(f) 23 Statutes 420.

(g) Housing Act, 1935, s. 26. The present rate is 5 per cent.

(h) Housing Act, 1925, s. 135; 13 Statutes 1070.

(i) Housing Act, 1935, s. 27 (3), (4).

If, on the other hand, the Minister receives a complaint that the local authority have unreasonably refused to make arrangements with an association, he may require the authority to furnish a report with reasons for their refusal (*k*).

The Minister has power also to unify the conditions relating to the management of houses in respect of which he has undertaken to contribute assistance under more than one enactment for the benefit of the same association (*l*).

Finally the Minister has power to recognise any "Central Housing Association" which existed on August 2, 1935, or is established later, and to pay grants for a period of five years after he has recognised it (*m*). The central association which has been recognised is the National Federation of Housing Societies (*n*), the chief functions of which are (1) the formation of new societies, (2) assistance and advice to existing societies, as and when required, and (3) acting as intermediary between the Government and Government departments and housing associations, and assisting in the parliamentary work that will thereby arise. [199]

Powers of Councils.—Under sect. 70 of the Act of 1925 (*o*), as amended by sect. 29 of the Act of 1935, a local authority for the purposes of Part III. of the Act of 1925 (*p*), or a county council may promote the formation or extension of housing associations. Where a local authority are unwilling to acquire land with a view to selling or leasing it to an association, a county council may (*q*) on the application of the association exercise all the powers of the local authority as to the acquisition and disposal of land. Both a local authority and a county council may, with the consent of the M. of H., and subject to any conditions or regulations he may impose, make grants or loans to an association, invest in their share or loan capital, or guarantee the payment of principal and interest of loans or loan capital of an association, or interest on the share capital (*r*). A local authority or county council may borrow money, subject to the Minister's sanction, for any of these purposes (*s*), and a county council may lend to a local authority within their area any money which the authority have power to borrow, subject to such conditions as the Minister may impose (*t*).

The powers of local authorities and county councils under sect. 27 of the Act of 1935 are administrative rather than financial. They may make arrangements (such arrangements being in the form of agreements under seal), with an association either, on the one hand, to provide houses for people displaced by clearance areas, by the demolition of insanitary houses or the closing of parts of houses under Part I. or Part II. of the Act of 1930, or by the abatement of overcrowding under Part I. of the Act of 1935, or, on the other hand, for the

(*k*) Housing Act, 1935, s. 27 (5).

(*l*) *Ibid.*, s. 28.

(*m*) *Ibid.*, s. 30. A grant of £1,000 in respect of the first of the five years has been made.

(*n*) Address : 13 Suffolk Street, Pall Mall, London, S.W.1.

(*o*) 13 Statutes 1041.

(*p*) *I.e.* a borough or district council; see s. 80 of the Act of 1925 (13 Statutes 1045), and in relation to the Act of 1935, s. 97 (2) of that Act.

(*q*) Housing Act, 1925, s. 70 (2); 13 Statutes 1041.

(*r*) *Ibid.*, s. 70 (3); *ibid.*, as amended by Housing Act, 1935, s. 29 (2).

(*s*) Housing Act, 1925, ss. 84, 85; 13 Statutes 1048, 1049.

(*t*) *Ibid.*, s. 84; *ibid.*, 1050. For the conditions, see S.R. & O., 1925, No. 733. This order does not apply to the L.C.C.

alteration, enlargement, repair or improvement of houses or buildings which the local authority have acquired for those purposes (a). [200]

Powers of the Public Works Loan Commissioners.—Apart from the assistance which a housing association may obtain from the M. of H. and from local authorities and county councils, the Public Works Loan Commissioners may lend the association money on certain conditions (b). If the Minister has approved the scheme to be undertaken by the association, money may be lent on the security of the land and houses which are the subject-matter of the scheme and of any similar scheme completed by the same association (c). The period of repayment may be for thirty or fifty years but, in the case of leasehold property, must be ten years short of the term of the lease. The loan may be up to 90 per cent. of the value of the property mortgaged, if the local authority or county council guarantee the repayment of capital and interest, and the loan may be made by instalments as the value increases with the progress of the work (d). If neither the local authority nor the county council guarantee the repayment, the commissioners may advance up to 75 per cent. of the value, but if the advance exceeds 66⅔ per cent. of the value of the property mortgaged, then the commissioners must require such further security as they think fit. [201]

(a) Housing Act, 1935, s. 27 (1). Note that by sub-s. (2) the authority have control over the types of house to be provided and the rent to be charged.

(b) Housing Act, 1925, s. 90; 13 Statutes 1051.

(c) Housing Act, 1935, s. 20 (2), (3).

(d) Act of 1925, s. 90 (4), (5); 13 Statutes 1052, as amended by Housing Act, 1935, s. 20 (4).

HOUSING BONDS

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For General Borrowing Powers, see title BORROWING.

For Corporation Bonds, see title BONDS.

Introduction.—Housing bonds were introduced in 1919, with the object of facilitating the raising by housing authorities of loans to finance the extensive housing programme then inaugurated. By sect. 7 of the Housing (Additional Powers) Act, 1919 (a), housing authorities (b) and county councils were authorised to issue "Local (Housing) Bonds," with the consent of the Minister of Health. Regulations governing the issue, application, management, and repayment of housing bonds were

(a) Repealed by the Housing Act, 1925.

(b) Councils of boroughs, urban districts and rural districts.

issued in 1920 (c), but were replaced by the consolidated regulations of 1925 (d). The local bond provisions of the Act of 1919 are now included in sect. 87 and the Fourth Schedule to the Housing Act, 1925 (e), as amended by Part II. of the Sixth Schedule to the Housing Act, 1935. Some 600 local authorities have been authorised by the Ministry to issue housing bonds. Power to issue housing bonds is additional to and not in substitution for any other power to issue stock, mortgages, or other form of authorised security, but, as is shown later, a consent to issue housing bonds has an important bearing upon the trustee status of the mortgages of a local authority.

Monies borrowed by the issue of housing bonds may be applied only to the purposes of the Housing Acts. Any two or more local authorities or county councils may, on a joint application to the Minister, be authorised to make a joint issue of bonds, secured upon the joint rates, property and revenues of the authorities or councils (f). Normally, however, local authorities act independently in the issue of housing bonds, which, although applicable only to housing purposes, are secured upon all the rates, property and revenues of the local authority (g), and thus rank *pari passu* with all other securities. [202]

Mode of Issue.—Under the regulations of 1925, housing bonds are issued in denominations of £5, £10, £20, £50 or £100 only, or in multiples of £100. They are issued at par, for periods of not less than five years, and are repayable at par. In fact, no actual bond is issued, but each holder of a local bond is entitled to receive a certificate, duly numbered and dated, and specifying the denomination of the bond and the period for which it is issued. The certificate, which must be in the form prescribed by the Second Schedule to the regulations, or in a form substantially similar, must bear the signature of the registrar of bonds (usually the chief financial officer of the local authority), and although the common seal of the local authority is sometimes affixed to the certificate, this does not appear to be essential. If a certificate is worn out or damaged, the local authority may cancel it and issue a new certificate in its place. If a certificate is lost or destroyed, a new certificate may be issued on proof of loss, and indemnity may be required against claims.

As with corporation bonds (see title BONDS), probably the most convenient and economical method of issuing housing bonds is that described on p. 46 of Vol. II. It is, of course, essential in any issue of housing bonds (other than an issue made for the purpose of repaying maturing bonds) that there should be a margin of unexercised borrowing powers for housing purposes to cover the amount of the issue. Investors are required to complete a form of application, on receipt of which, with the sum invested, the bond certificate is issued in exchange. The simplicity of administration which characterises corporation bonds is also a feature of housing bonds. They appeal to the small investor, since they may be issued for an amount as low as £5, and where the holding does not exceed £100, interest is paid without deduction of tax,

(c) Housing (Local Bonds) Regulations, 1920 (S.R. & O., 1920, No. 197).

(d) Housing Consolidated Regulations, 1925 (S.R. & O., 1925, No. 866), Part III. see p. 3423 of Lumley's Public Health, 10th ed.

(e) 18 Statutes 1050, 1074.

(f) Act of 1925, s. 87 (3); 13 Statutes 1050.

(g) *Ibid.*, Sched. IV., para. 1; 13 Statutes 1074.

see *post*, p. 96. Bankers and brokers, who are supplied with forms of application, are usually allowed a commission of 5s. per cent. on the amount of the bonds applied for through them. Power to pay expenses of issue (including commission) is given by the regulations. For the protection of bondholders, the regulations provide that they shall not be concerned to inquire as to the legality or regularity of the issue of bonds or other proceedings, or as to the application of the moneys so raised. [203]

Records.—Art. 12 of the regulations requires the local authority to keep a register, called the Local Bonds Register, of local bondholders, containing the name, address and description of each holder, a statement of the denomination of the bonds held by him, the periods for which they are issued, and the numbers and dates of the certificates issued. The date of registration and the date of ceasing to be registered must also be entered in the register, which is *prima facie* evidence of any matter entered therein and of the title of the persons entered as bondholders. A register of transfers must also be kept. No notice of any trust may be entered in any register or be receivable by the local authority. [204]

Stamp Duty.—To the local authority one of the attractive features of housing bonds is that they are exempt from the capital stamp duty which is payable on the issue of stock or other securities. Stamp duty is payable on transfers, however, and it is usually borne by the local authority, but may be compounded for under sect. 115 of the Stamp Act, 1891 (*h*). [205]

Transfer and Transmission.—Transfer of a local bond, in whole or in part (such part being an amount for which a local bond may be issued), is effected by deed, in the form prescribed in the Second Schedule to the regulations or in a form substantially similar. No fee is payable on transfer. The local bonds register may be closed for not more than thirty days immediately before March 31 and September 30 in each year, during which transfers will not be registered. Any person becoming entitled to a local bond by reason of the death or bankruptcy of a holder, or by any lawful means other than a transfer, may, by producing evidence of title, either be registered as holder of the bond or make a transfer of it (*i*). Where two or more persons are registered as holders of a bond they are deemed to be joint holders with right of survivorship between them (*i*). [206]

Interest.—Interest is payable half-yearly on March 31 and September 30 in each year (*h*), by means of a warrant sent by post to the holder at the address shown in the register, unless the holder otherwise requests (*i*). Where more persons than one are registered as joint holders of a bond any one of them may give an effectual receipt for interest, unless notice to the contrary has been given to the local authority by any other of them. The first payment of interest must, of course, be adjusted in accordance with the date of issue of the bond.

The rate of interest payable is the rate fixed at the time of issue. Until 1935 the rate was fixed from time to time by the Treasury, and

(*h*) 16 Statutes 653.

(*i*) Regulations of 1925, Reg. 16.

(*h*) But where a holding does not exceed £50, interest may be paid yearly on March 31—see proviso to Reg. 10 (1) of Regulations of 1925.

(*i*) Regulations of 1925, Reg. 17.

during the period 1920—1935 it varied between 6 and 8½ per cent. Under para. 1 of the Fourth Schedule to the Housing Act, 1925 (*m*), as amended by Part II. of the Sixth Schedule to the Housing Act, 1935, the rate of interest is to be such rate “*as the local authority may determine at the time of the issue of the bonds.*” Income tax is deductible from all interest payments, except where the total holding does not exceed £100, in which case interest is payable *without* deduction of tax (*n*). This concession was introduced in order to encourage the small investor and to obviate numerous repayments of income tax, but the interest must nevertheless be accounted for and charged, where there is a personal liability, under Case III., Sched. D, Income Tax Act, 1918 (*o*).

If any interest due remains unpaid for two months after demand in writing, the persons entitled thereto may apply to the High Court for a receiver, and the court may if it thinks fit appoint a receiver on such terms as it thinks fit, with the necessary powers to collect, recover and apply moneys and rates due to the local authority (*p*). Interest unclaimed at the time for payment must be paid on demand at any subsequent time to the person showing his right to it (*q*). [207]

Repayment.—Local bonds are repayable at par on the dates specified in the bond certificates, unless they have been previously redeemed and cancelled by agreement with the bondholder. Repayment will be made out of funds provided by a borrowing for the purpose of redeeming bonds (*r*), or out of sinking fund moneys provided in accordance with the borrowing power or loan sanction exercised by the issue of the bonds (see titles BONDS and BORROWING). As an alternative to repayment, local bonds may be renewed by agreement with the holders, for such term as may be agreed, at the rate of interest fixed at the time of renewal. In this connection the M. of H. have suggested that where a local authority decide to offer to renew maturing bonds, they should communicate with the bondholders approximately two months before the redemption dates, and should request that a reply be made within a specified period, *e.g.* four weeks (*s*). At the expiration of that period, the authority will know the extent to which the bonds can be redeemed by the issue to the existing holders of a fresh certificate for new bonds, and also the amount required for the redemption of bonds by a repayment in cash. It will then be open to the authority to receive applications for local bonds from new lenders or to make arrangements for borrowing this sum by other means.

There is one other method, entirely special, whereby a local bond may be redeemed and cancelled, namely, by acceptance of a local bond at its nominal value in payment or part payment of the purchase price of any house erected by or on behalf of *any* local authority in pursuance of any scheme under the Housing Act, 1925 (*t*). Where under this provision a local authority accept a local bond issued by another local authority, the local authority by whom the bond was

(*m*) 18 Statutes 1074.

(*n*) Act of 1925, Sched. IV., para. 4; 13 Statutes 1075.

(*o*) 9 Statutes 561.

(*p*) Regulations of 1925, Reg. 22.

(*q*) *Ibid.*, Reg. 24.

(*r*) A consent of the Minister is not needed—see Act of 1925, s. 87 (4); 13 Statutes 1020.

(*s*) M. of H. Circular No. 556 (Housing), February, 1925.

(*t*) Act of 1925, Sched. IV., para. 5; 13 Statutes 1075.

issued must, if required, redeem the bond by paying its amount to that local authority (u). [208]

Trustee Status.—Trustees may invest any trust funds in their hands in local bonds, unless expressly forbidden by the instrument creating the trust (a). Moreover, where a local authority *are authorised to issue* local bonds, the mortgages granted by that authority after the passing of the Housing (Additional Powers) Act, 1919, are also available for investment by trustees (b). The extent to which local authorities have taken advantage of this provision is indicated by the fact that, although some 600 authorities have been authorised to issue local bonds, the number of authorities who have actually issued bonds is much smaller. Many of them have sought authority to issue housing bonds merely in order to secure trustee status for their mortgages (c). [209]

London.—Metropolitan borough councils may not issue local bonds (d). The power accordingly vests only in the L.C.C. and the City corporation and has been extensively used by the L.C.C. [210]

(u) Regulations of 1925, Reg. 10 (4).

(a) Trustee Act, 1925, ss. 1 (1) (p), 69 (2); 20 Statutes 97, 161.

(b) *Ibid.*, s. 1 (1) (p); 20 Statutes 97.

(c) M. of H. Report, 1931/32, Cmd. 4113, p. 153.

(d) Housing Act, 1925, s. 87 (1); 13 Statutes 1050.

HOUSING MANAGER

See HOUSE PROPERTY MANAGEMENT.

HOUSING OF RURAL WORKERS

See RECONDITIONING OF HOUSES.

HOUSING SUBSIDIES

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See also list of other titles dealing with Housing, *ante*, p. 63.

INTRODUCTION

In order to stimulate the supply of new housing accommodation and the improvement of existing housing conditions, the Legislature has conferred upon the Minister of Health and local authorities certain financial powers and duties. These, in so far as they are exercisable by a local authority, are generally conferred and imposed upon the same authorities as are empowered to supply new housing accommodation, that is the council of the borough or urban or rural district. In one or two instances, however, the county council are concerned, particularly in connection with rural districts. A fundamental difficulty of a local authority who provide new housing accommodation for the working classes, has been that the poorer wage-earners have been unable to pay an economic rent for satisfactory accommodation, while the charging of rent, which would be within their reach, has been beyond the resources of many authorities, and particularly of those in whose districts the need for new or improved accommodation has been greatest. In these circumstances, the policy has been adopted of allowing the M. of H. to come to the assistance of local authorities by making grants or contributions from Government funds, or similarly of allowing the county council to contribute to the expenditure of the council of a non-county borough or district.

The subject-matter of this article may, therefore, be treated under two main heads. First, there are the powers and duties of the local authority to give financial assistance to others; and secondly there are

the powers and duties of the Minister of Health to give such assistance to a local authority.

The powers and duties of the local authority fall into three categories; (1) the power to make loans; (2) the power to give guarantees as to the repayment of loans; and (3) the power to make grants or contributions. The powers and duties of the M. of H. are generally confined to the making of contributions annually over a period of years towards the expenses incurred by an authority in the exercise of their powers. The powers of the Minister have from time to time been altered by Parliament in respect both of the amount of the contributions and the circumstances in which they may be made. Many powers, in pursuance of which the Minister has in the past undertaken to make annual contributions, and so created an existing liability which may continue for several years to come, cannot now be further exercised.

Borrowing by local authorities and county councils, and the obligation under Part III. of the Housing Act, 1935, to keep a Housing Revenue Account and other accounts are dealt with, *ante*, pp. 81-86. [211]

POWERS AND DUTIES OF A LOCAL AUTHORITY

Advancement of Loans under Housing Act, 1925, sect. 91.—Where the owner of a house or building is carrying out works for its reconstruction, enlargement, or improvement, he may apply to the council of the borough or urban or rural district in which it is situate for a loan of the whole or any part of the amount necessary to defray the cost of the works and of any incidental costs, charges or expenses; and the council have power to make such a loan (*a*). Applications may be entertained from any person or persons whose interest, or combined interests, constitute either an estate in fee simple or a leasehold interest in possession whereof a period not less than ten years in excess of the period fixed for repayment of the loan remains unexpired when the loan is made. The authority can make a loan only if they are satisfied that after the works are carried out the house or building will be in all respects fit for habitation as a dwelling-house or as houses for the working classes, and in no case may the amount of the loan exceed one-half of the estimated value of the property, unless some additional or collateral security is given sufficient to secure the excess. Full particulars of the contemplated works and, where required by the local authority, plans and specifications, must be submitted to the authority before the works are commenced.

Before making any loan the authority must satisfy themselves that the works have been carried out in a satisfactory and efficient manner. This provision has rendered the power of little practical value; for it has meant that the owner has been compelled to finance from some other source the cost of the works. A local authority who desire to make a loan for housing purposes have, therefore, generally found it necessary to rely upon the power next to be mentioned. [212]

Sect. 92.—Sect. 92 of the Housing Act, 1925 (*b*), which extends to councils of counties as well as to those councils referred to in sect. 91, enables money to be advanced to persons or bodies of persons constructing or altering, or undertaking to construct or alter, houses;

(*a*) Housing Act, 1925, s. 91; 13 Statutes 1053.

(*b*) 13 Statutes 1054.

or acquiring, or undertaking to acquire, houses the construction of which was begun after April 25, 1923. The power has been extended by sect. 47 of the Housing Act, 1930 (c), to enable an advance to be made to persons or bodies of persons carrying out, or undertaking to carry out, repairs to a house. Both the above powers may be exercised whether the house in question is within or without the area of the authority or council (d).

Before making any advance, the authority must be satisfied that the houses in respect of which assistance is to be given will, when the building, alteration or repair has been completed, be in all respects fit for human habitation. No advance can be made in respect of a house if its superficial area (measured in accordance with rules made by the Minister (e)) is less than 620 superficial feet, in the case of a two-storied house, or, in the case of a structurally separate and self-contained flat or a one-storied house, less than 550 superficial feet. If the Minister is satisfied that in the special circumstances of the area there is a need for smaller houses than this, the minima may be reduced to 570 and 500 superficial feet respectively. No advance can be made in respect of a house of which the estimated value of the fee simple free from incumbrances exceeds £800 (f). [213]

Before an advance can be made, a valuation of the house must be carried out by the authority. Repayment of the advance, together with interest thereon (g), must be secured by a mortgage of the house, and the amount of the advance may not exceed 90 per cent. of the value of the interest of the mortgagor in the house (h). The mortgage deed must provide for repayment being made either by instalments of principal, or by an annuity of principal and interest combined. In any case the deed must provide for repayment on demand of the balance outstanding on breach of any of the conditions under which the advance is made. The advance may be made by instalments as the building or alteration proceeds; except that the total amount of the advance may not at any time exceed 50 per cent. of the value of the work done up to that time, together with the value of the interest of the mortgagor in the site of the house (i). No advance may be made upon the security of a leasehold interest unless at the date of the advance the unexpired residue of the term exceeds by at least ten years the period during which repayment of the advance must be made (k). [214]

(c) 23 Statutes 430.

(d) Cf. the power given under s. 91, which can be exercised only within the district, although (unlike this power) it can be exercised in respect of buildings other than houses.

(e) See the circular of the Minister, dated August 20, 1924.

(f) S. 92 (4), as amended by the Housing Act, 1935, s. 76 (2). In the case of a flat, it is the estimated value of the flat which must be taken into account.

(g) There is no power to prescribe a rate of interest.

(h) S. 92 (3) (a). This means, in relation to an advance secured by a mortgage created by a person who acts in that behalf in a fiduciary capacity, and who has also a beneficial interest in the property, the value of the interest which that person has power to mortgage by virtue of his fiduciary capacity; see Housing Act, 1935, s. 76 (1). It is submitted that this value, in the case of the alteration of a house, must be based on the value of the house after the alteration has been carried out.

(i) This is the language in s. 92 (3) (b). It is odd that the limit on an advance for alterations and on an advance for the purpose of building a new house should be calculated on the same basis.

(k) All these conditions are contained in the Housing Act, 1925, s. 92 (3); 13 Statutes 1055.

Advancement of Loans under Housing (Rural Workers) Act, 1926.—

A power to give assistance by way of loan is also contained in the Housing (Rural Workers) Act, 1926 (*l*), the object of which is to promote the provision of housing accommodation for agricultural workers, and the improvement of such accommodation. The local authority (see *infra*) may submit (*m*) to the M. of H. schemes under the Act with respect to the reconstruction and improvement of houses or buildings within their area; and the scheme may provide for the giving of financial assistance by the authority towards the carrying out of the works proposed therein. The assistance may take the form either of a grant or of a loan or of a combination of both (*n*).

The local authorities who can prepare schemes and give assistance are county councils and county borough councils. The M. of H. may declare that any such council shall perform the functions of a local authority to the exclusion of the county council; and the county council and the council of any non-county borough or district within the county may make arrangements for the performance by the latter authority of any duties connected with the administration of a scheme (*o*). The Act of 1926 appears to contemplate that assistance under a scheme shall be given to private owners, but sect. 38 (1) of the Housing Act, 1935, provides that assistance may also be given to local authorities who are not authorities for the purposes of the Act of 1926. Borough and district councils may, therefore, now receive assistance.

[215]

Before any assistance can be given by way either of grant or of loan the following conditions must be fulfilled (*p*): (i.) the application for assistance must be received by the authority before June 24, 1933 (*q*); (ii.) the value of the dwelling after completion of the proposed works must not exceed £400 (*r*); (iii.) the estimated cost of the works must not be less than £50 (*s*); (iv.) if the application is received from a leaseholder, his interest must be for a term of years absolute, of which not less than thirty years remain unexpired at the date of the application.

The local authority must also be satisfied, before giving assistance, that the dwelling will, after completion of the works, be in all respects fit for habitation as a dwelling by persons of the working classes. For this purpose, the standard prescribed by sect. 62 (3) of the Housing Act, 1930 (*t*), should, it is suggested, be applied. The authority may refuse assistance on any grounds that seem to them sufficient; and in particular they must refuse assistance if it appears to them that the house in respect of which the works are to be executed cannot be

(*l*) 13 Statutes 1162.

(*m*) By s. 1 (1) the authority *must* submit a scheme if required by the M. of H. so to do.

(*n*) S. 2 (1); 13 Statutes 1163. For a description of the kind of works that may be assisted, see M. of H. Circular 756, Jan. 1927, para. (iii.).

(*o*) S. 5; *ibid.*, 1108. Duties connected with administration would not, of course, include the duty of giving assistance.

(*p*) S. 2 (2).

(*q*) S. 2 (2) (c), as amended by s. 87 (1) of the Housing Act, 1935. By s. 37 (2), references in schemes in existence when the latter Act came into operation to dates in 1931 or 1936 are to be construed as references to June 24, 1935.

(*r*) In arriving at the value, carving and panelling must not be taken into account.

(*s*) When the proposed works will constitute an improvement to two or more dwellings, assistance may be given if the estimated total cost of the works (including the cost of any works executed in connection with the joint works but separately in respect of the several dwellings or any of them) is not less than £100.

(*t*) 23 Statutes 436.

converted into a dwelling which is in all respects satisfactory, or if the house is one of historic, architectural, or artistic interest and the carrying out of the works would destroy or seriously diminish that interest (u). [216]

The following conditions must be fulfilled with regard to any loan made in pursuance of a scheme (a). (1) The loan together with interest at the prescribed (b) rate must be secured by a mortgage of the dwelling; (2) the amount of the loan must not exceed 90 per cent. of the value which it is estimated the security will bear after completion of the works; (3) the mortgage deed must (c) provide for repayment being made either by instalments of principal or by an annuity of principal and interest combined, and should contain a provision that, in the event of any condition subject to which the loan is made being broken, the whole of the balance outstanding shall become repayable on demand; (4) the loan may be made by instalments as the works progress, but at no time before the completion of the works may the total amount lent exceed 50 per cent. of the value for the time being of the mortgaged property; and (5) before any loan is made a valuation of the property must be duly made on behalf of the local authority.

See, further, the title RECONDITIONING OF HOUSES. [217]

Guarantee by Local Authority for Repayment of Loans.—Where a society incorporated under the Building Societies Acts, 1874 to 1894, or the Industrial and Provident Societies Acts, 1893 to 1913, make an advance to one of their members for the purpose of enabling him to build a house or acquire a house the construction of which was commenced after April 25, 1923, a local authority may undertake to guarantee the repayment of the advance with any interest thereon (d). This power is exercisable either by a local authority (e) or a county council. It is available only where the house fulfils the requirements with regard to superficial area and fee simple value mentioned above (f) in connection with the power to make a loan.

The power of the M. of H. under sect. 2 of the Housing (Financial Provisions) Act, 1933 (g), to reimburse from Government funds a part of the loss sustained by an authority or county council under a guarantee given by them is dealt with, *post*, at p. 117. [218]

Grants or Contributions. *By County Council to R.D.C.*—In certain circumstances a county council are under an obligation to make contributions in aid of the housing activities of an R.D.C. When an R.D.C. have adopted proposals for the provision of houses, they may send to the county council a statement of their proposals. Thereupon the county council are obliged to undertake to make to the district council

(u) Act of 1926, s. 2 (3); 13 Statutes 1163.

(a) *Ibid.*, s. 2 (5). And see the provisions of the Schedule to the Act; *ibid.*, 1170.

(b) That is $\frac{1}{2}$ per cent. in excess of the rate of interest which, one month before the date on which the terms of the loan are settled, was the rate fixed by the Treasury under sect. 1 of the Public Works Loans Act, 1897, for loans to local authorities out of the Local Loans Fund for the purposes of Part III. of the Housing Act, 1925; see the Housing Act, 1935, s. 37 (3).

(c) The Act says "may." But it is thought the loan should be made repayable during a fixed period without any necessity for the authority to call it in.

(d) Housing Act, 1925, s. 92 (1) (b); 13 Statutes 1054.

(e) That is by the council of the borough or urban or rural district.

(f) See *ante*, p. 100.

(g) 26 Statutes 646.

a contribution at the rate of £1 per house for a period of forty years following the completion of each house (*h*). The contribution is payable only in respect of such of the houses comprised in the rural district council's proposals as are required for the accommodation of the agricultural population of the district. The question as to how many of the houses are so required is decided by the county council, or, in the event of any dispute between the county council and the R.D.C., by the Minister. The expression "agricultural population" means persons whose employment or latest employment is or was employment in agriculture or in an industry mainly dependent upon agriculture (*i*), and includes also the dependants of such persons; the expression "agriculture," includes dairy farming and poultry farming and the use of land as grazing, meadow, or pasture land, or orchard or osier land, or woodland, or for market gardens or nursery grounds. [219]

The undertaking by the county council is limited to those of the proposed houses which are originally decided to be for the accommodation of the agricultural population. The position, therefore, would seem to be that if the rural district council's proposals comprise twenty houses and it is decided that ten of these are required for the agricultural population, the contribution of the county council can never exceed £10 in any one year, notwithstanding that at a later date some of the remaining houses come to be occupied by agricultural labourers.

The Minister has power to make contributions towards the expenses of an R.D.C. in providing accommodation for the purpose of abating overcrowding in the rural district (*k*), and a county council are obliged (*l*) to make a contribution to the R.D.C. in respect of all houses towards which the Minister has undertaken to make such a contribution. The amount of the contribution is also £1 annually over a period of forty years from the completion of the house.

In addition to their duty to make contributions in respect of houses required for the agricultural population, the county council have a general power to undertake to make to an R.D.C. an annual contribution in the case of any house provided with the approval of the Minister. This contribution may be of any amount and payable during any period (*m*).

Sect. 51 (4) of the Housing Act, 1935, imposes on an R.D.C. an obligation to secure that a number of dwelling-houses, equal in number to those in respect of which the county council have undertaken to make one of the above contributions, are reserved for members of the agricultural population, except in so far as the demand for accommodation on the part of such persons can be satisfied without such reservation. [220]

By Local Authority under Housing (Rural Workers) Act, 1926.— Assistance under the Housing (Rural Workers) Act, 1926, may take the

(*h*) The Housing Act, 1930, s. 34; 28 Statutes 422; as amended by the Housing Act, 1935, Fifth Schedule. It would seem that this contribution is payable irrespective of whether the district council is receiving a contribution from the Minister for the houses.

(*i*) This phrase is vague. It may mean industries such as milling and brewing, which draw their raw materials from the farm; or industries such as the manufacture of agricultural implements, that provide plant for the farmer; or it may include both. Probably industries such as saw milling and fruit canning would be included.

(*k*) See *post*, p. 111.

(*l*) Housing Act, 1935, s. 34 (3).

(*m*) Housing Act, 1930, s. 34 (3); 23 Statutes 423.

form either of a loan or of a grant (n). Where assistance is given by way of grant the same conditions with regard to the house in respect of which the assistance is given, must be fulfilled as in the case of a loan (o). The grant may be made either by payment of a lump sum after the completion of the works, or (where money has been borrowed from some other source for the purpose of financing the works) by paying over a period not exceeding twenty years any part of any periodical sums which may be payable by way of interest or repayment of capital in respect of a loan so raised. The amount of the grant may not exceed either two-thirds of the estimated cost of the works in respect of which it is made, or the sum of £100 in respect of each dwelling, and where it is made by the provision of periodical sums the amount of the grant is deemed to be the capital value of these sums as at the date of the completion of the works (p).

Whenever a grant is made in respect of a house certain conditions are imposed by sect. 3 of the Act in relation to the house, for a period of twenty years from the date on which it first becomes fit for occupation after the completion of the works. These conditions, which are set out in sect. 3 of the Act, apply as if they were part of any lease or tenancy agreement affecting the house, and are as follows (q) :

- (i.) The house may only be occupied by (A) an agricultural worker or an employee of substantially the same economic condition employed by the person who is rated in respect of the house ; or (B) a person whose income is, in the opinion of the authority, such that he would not ordinarily pay a rent in excess of that paid by agricultural workers in the district.
- (ii.) The rent payable by the occupier for the house may not exceed the "normal agricultural rent." Where the cost of the works executed exceeds the amount of the grant made by the authority (i.e. where part of the cost of the works has fallen upon the owner of the house) the amount of the rent may exceed the normal by a sum equal to 4 per cent. (r) of the amount of this excess. The amount of the "normal agricultural rent" depends upon whether the house in question has or has not within a period of five years immediately preceding the execution of the works been separately let as a house. Where it has not been so let, the appropriate rent is that which the authority determine to be the average weekly rent for the time being paid by agricultural workers in the district. Where it has been so let, the appropriate rent is the average weekly rent determined by the local authority to have been payable during the period of the letting, but if there has been a general increase of rents in the district so that the average determined by the authority is less than the rent normally paid by agricultural workers in the district, the rent so normally paid must be deemed to be the normal agricultural rent.

(n) 13 Statutes 1162. See as to assistance by loan, *ante*, p. 101.

(o) See *ante*, p. 101.

(p) Act of 1920, s. 3 (4) ; 13 Statutes 1164.

(q) The conditions should be registered as a local land charge ; see s. 3 (4) ; 13 Statutes 1167. These conditions do not apply with regard to a dwelling in respect of which a local authority have secured assistance ; see s. 52 (2) of the Housing Act, 1935. Such a dwelling is subject to the conditions mentioned, *post*, p. 115.

(r) See Housing Act, 1935, s. 37 (4).

- (iii.) The owner of the house must give to the authority a certificate to the effect that the above two conditions are being complied with in respect of the house. This certificate may be required by the local authority from time to time and at any time, and the tenant must furnish to the owner any information which he may require for the purpose of giving such a certificate (s).
- (iv.) On an assignment or parting with possession by the tenant, no one may receive any consideration other than payment of the rent. [221]

If a dwelling is occupied by a person of the appropriate class, and the occupier ceases during the period of his occupation to belong to the class, the authority may assent to his remaining in occupation of the house; and where such assent is given, his occupation is not deemed to be a contravention of the first of the above conditions until the assent has been withdrawn (t).

The owner may relieve the house of the burden of the conditions by paying to the authority, at any time within the period of twenty years, the amount of the grant, or of such instalments thereof as have been paid, together with compound interest thereon at the prescribed rate calculated with yearly rests (u). This can only be done if the Minister, after consultation with the authority, gives his approval (t). A mortgagee of the house who has become entitled to exercise his power of sale may in like manner rid the house of the conditions, and any sum paid by a mortgagee for the purpose of relieving the house of the conditions must be treated as being part of the sum secured by the mortgage and may be discharged accordingly (a).

The authority may apply to the county court of the district in which the house is situated, and the court has jurisdiction (whatever be the value of the house or the amount in respect of which the application is made) to grant an injunction restraining the breach, or apprehended breach, of any of the above conditions other than the one relating to the certificate, or to make an order directing payment to the authority of any sum that has become payable by reason of such breach (b). [222]

Miscellaneous Powers.—The Housing Acts confer upon local authorities a number of minor powers to give financial assistance for the purpose of stimulating the supply of new housing accommodation.

A county council have power to lend to any local authority within their area any money which that authority have power to borrow for the purposes of the Housing Acts (c). This power must be exercised subject to such conditions as the Minister may by order impose (d).

Where housing operations under Part III. of the Act of 1925 are being carried out by a local authority outside their area they may, subject to the approval of the Minister, enter into an agreement with the council of any county or district in which the operations are being

(s) It is difficult to see how this condition can "apply as if it was part of a tenancy agreement affecting the dwelling."

(t) Act of 1926, proviso to s. 3 (1); 13 Statutes 1166.

(u) That is, 5 per cent.; see circular of the M. of H., dated May 16, 1933.

(a) Act of 1926, s. 3 (2). Accordingly, the mortgagee is *pro tanto* relieved from his obligation to account to the mortgagee for surplus proceeds of the sale.

(b) *Ibid.*, s. 3 (5); 13 Statutes 1167.

(c) Act of 1925, s. 94; *ibid.*, 1056.

(d) See S.R. & O., 1925, No. 733.

carried out as to the terms and conditions upon which works incidental to the operations (such as the laying of sewers or water mains) shall be executed (e). Such an agreement may impose a financial obligation upon the council in whose area the works are being carried out. When this is so, the local authority have power, subject to the approval of the Minister, to lend to the council any sum for which they may have made themselves liable under the agreement (f). [223]

POWERS AND DUTIES OF THE MINISTER OF HEALTH

In order to understand the present state of the law with regard to the contributions which the M. of H. is required or empowered to make for promoting the provision of housing accommodation, it is necessary to refer briefly to the various Acts which have been or are in force under which such contributions have been or may be made. The assistance has always taken the form of annual payments over a period of years. In some cases the Act under which the payments were undertaken has been repealed, or its operation suspended, so that no further undertakings to make such payments can be made. Payments are, however, still being made in respect of undertakings given before the repeal or suspension of the Act, and it is important to notice the circumstances under which the Minister may discontinue or reduce the amount of the payments. The relevant Acts are as follows.

Under Housing, Town Planning, etc., Act, 1919.—By sect. 7 of this Act (g), the Minister was placed under an obligation to pay or undertake to pay to a local authority such part of the loss sustained by the authority or county council in carrying out an approved housing scheme (h) as should be prescribed by regulations made by the Minister. This section was repealed by sect. 6 of the Housing, etc., Act, 1923. The amount of the contribution which is to be payable in pursuance of any undertaking made under the section before its repeal is now determined by Part II. of the Fourth Schedule to the Housing Act, 1935. As a condition of receiving the contribution the local authority must themselves make a contribution under para. 1 of Part III. of that Schedule. [224]

Under Housing, etc., Act, 1923 (i).—Under this Act provision was made for two kinds of contributions :

- (i.) Under sect. 1 (3) the Minister was empowered to make contributions towards the expenses incurred by a local authority in carrying out re-housing in connection with a scheme made under Part I. or Part II. of the Housing of the Working Classes Act, 1890.

This sub-section was repealed by the Housing Act, 1930, which abolished the power of the authority to make the schemes contemplated by the sub-section, but by sect. 26 (5) this repeal did not affect any undertaking already given by the Minister to make a contribution. The amount of the contribution is now determined by para. 9 of Part II.

(e) Act of 1925, s. 62 (13 Statutes 1038), as amended by Sched. V. to Housing Act, 1930.

(f) *Ibid.*, s. 93 (*ibid.*, 1055), as amended as above indicated.

(g) 18 Statutes 656.

(h) That is a scheme approved under s. 1 of the Act ; or under Part I. or Part II. of the Housing of the Working Classes Act, 1890.

(i) 18 Statutes 984.

of the Fourth Schedule to the Housing Act, 1935. It is a condition of the authority's right to receive contributions that they shall themselves make out of the general rate fund as from April 1, 1935, a contribution equal to the amount of the Exchequer contribution for each year during which the latter contribution is payable, together with the amount of any loan charges for that year in respect of money borrowed for expenditure in connection with the scheme which was not approved by the Minister for the purpose of the determination of the Exchequer contribution (*k*).

(ii.) Under sect. 1 (1) of the Act of 1923, the Minister was put under an obligation to make or undertake to make contributions towards:

(A) Expenses incurred by a local authority in promoting in any one of several specified ways the construction of houses of a specified type and size; and

(B) Expenses incurred by the authority in the provision of such houses themselves (*l*).

The amount of the contribution as originally fixed by the Act was £6 for each house payable annually over a period of twenty years, except that where the amount of the expenses incurred by the authority under (A) above was less than the value of £6 a year for twenty years the contribution had to be reduced so as to make it equal to the amount of the expenses so incurred. A short time after the Act was passed the Minister was empowered (*m*) to alter the amount of the contribution, or the period for which it was payable, in respect of houses not completed before a date specified in the order. In pursuance of this power the Minister by order (*n*) in 1926 reduced the amount of the contribution to £4 a year payable annually for twenty years in respect of houses not completed before October 1, 1927; and in 1928 he ordered (*o*) that no contribution at all should be payable in respect of houses not completed before October 1, 1929. Finally the power of the Minister to make contributions in respect of houses not comprised in proposals submitted to him before December 7, 1932, was taken away by the Housing (Financial Provisions) Act, 1933 (*p*). [225]

In order to attract the annual contributions under (A) above towards their expenses incurred in "promoting" the construction of houses, it was necessary for the authority to adopt one or other of the following ways of giving assistance (*q*): (1) by making or undertaking to make grants by way of lump sum payments on completion of the house; or (2) by undertaking to pay to the person by whom the rates on the house were payable an annual sum for a period not exceeding twenty years; or (3) by undertaking to provide over any period any part of the periodical sums payable to a building society or any other person by

(*k*) Housing Act, 1935, Sched. IV., Part III., para. 3.

(*l*) As the Act stood originally the authority had to satisfy the Minister that the needs of their area could more appropriately be met by the provision of the houses by the authority themselves before a contribution could be obtained under this head. The necessity for this was, however, removed by the Housing (Financial Provisions) Act, 1924; 13 Statutes 902.

(*m*) By Housing (Financial Provisions) Act, 1924, s. 5; 13 Statutes 908.

(*n*) Housing Acts (Revision of Contributions) Order, 1926; S.R. & O., 1926, No. 1586.

(*o*) Housing Acts (Revision of Contributions) Order, 1928; S.R. & O., 1928, No. 1039.

(*p*) See s. 1; 26 Statutes 646.

(*q*) Housing, etc., Act, 1923, s. 2 (3); 13 Statutes 987.

way of interest on or repayment of advances made for the purpose of building or purchasing a house.

A local authority could undertake to give assistance in any of the above ways subject to such conditions as they might, with the approval of the Minister, impose; and they might, before undertaking to give any assistance, require security to be given that any conditions imposed by them would be observed (*r*). It may be that in the future some condition, subject to which an undertaking to give assistance has been made, will be broken. In that case the authority will be in a position both to discontinue future payments (if any) which fall due under the undertaking, and also, it seems, to recover any monies which they may have paid as a result of the undertaking (*s*). When the authority are, by reason of some breach of a condition, enabled to discontinue giving assistance under some undertaking they have entered into, the contributions of the Minister towards expenses incurred by the authority in giving such assistance will cease; and when the authority are able to recover monies they have already paid under an undertaking, it is thought that the Minister will be able to recover from the authority the amount of the contributions he has made.

It is now a condition of the right of the local authority to receive a contribution under sect. 1 (1) (*b*) as originally enacted towards their expenses in themselves providing accommodation (but not a condition of their right to receive a contribution towards their expenses in promoting the construction of houses) that they shall as from April 1, 1935, make out of the general rate fund a contribution for each financial year, during the remainder of the period of twenty years from the completion of the house, of an amount equal to the amount of the Exchequer contribution in respect of the house for that year (*t*), or an amount equal to the average annual amount contributed from the rate fund in respect of the house during the five years ending on March 31, 1935, whichever is the less.

Where, however, the Minister's undertaking was given under sect. 1 (1) (*b*) of the Act of 1923, as amended by the Act of 1924, the local authority's contribution is governed by para. 4 of Part III. of the Fourth Schedule to the Act of 1935; see *post*, p. 109. [226]

Under Housing (Financial Provisions) Act, 1924.—Under this Act the Minister could make contributions at a higher rate than under the Act of 1923, provided the houses in respect of which the contributions were made were subject to certain special conditions mentioned in the Act (*u*). Contributions under the Act could be made: (1) towards the expenses incurred by a local authority in promoting the construction of a house (*a*); (2) towards the expenses incurred by the authority in providing a house themselves; (3) towards the expenses of a society, body of trustees or company in providing a house.

The original contribution which the Minister was empowered to make under the Act was £9 a year for a period of forty years, or in the

(*r*) Housing, etc., Act, 1923, s. 2 (4), (5).

(*s*) *Burnham-on-Sea U.D.C. v. Channing and Osmond*, [1933] Ch. 583; Digest (Supp.).

(*t*) Housing Act, 1935, Sched. IV., Part III., para. 2.

(*u*) In s. 2; 13 Statutes 992. For the position with regard to these conditions, see *post*, p. 109.

(*a*) The promotion must be effected in accordance with the Housing, etc., Act, 1923, s. 2; 13 Statutes 986; as amended by the Act of 1924, s. 2 (1), proviso (ii.); 13 Statutes 993.

case of a house in an agricultural parish £12 10s. (b). Sect. 5 of the Act (c) allowed the Minister by order to alter the amount of the contribution in respect of houses not completed before a date specified in the order. In pursuance of this power the amounts of the contributions were, in 1926 (d), reduced to £7 10s. and £11 respectively in respect of houses not completed before October 1, 1927; and, in 1928 (e), to £6 and £9 10s. respectively in respect of houses not completed before October 1, 1929. In 1929, however, the effect of the order made in 1928 was nullified by Act, and the position as it existed under the order of 1926 was restored (f). Finally the power of the Minister to make contributions was abolished by the Housing (Financial Provisions) Act, 1933 (g). [227]

It is now a condition of the right of an authority to receive a contribution from the Minister under sect. 1 (1) (b) of the Act of 1923, as amended by sects. 1, 2 of the Housing (Financial Provisions) Act, 1924 (h), that they should as from April 1, 1935, themselves make an annual contribution out of the general rate fund for each financial year during the remainder of the period of sixty years over which the contribution of the Minister is payable (i). The amount of the contribution is an annual sum, calculated by reference to a period of sixty years, of £4 10s. provided annually over a period of forty years in the case of a house which was completed before September 30, 1927, and of £3 15s. in the case of a house completed after that date. These sums were the maximum contributions which the authority had to make under the Act by way of subsidising the rents of the houses and keeping such rents down to the "appropriate normal rents" as defined by the Act; and there may be cases where a local authority have found it possible to make, and were on April 1, 1935, making, a contribution of less than the maximum, and nevertheless charging rents within the prescribed limit. In such cases the contribution payable after April 1, 1935, will be the lesser sum which the authority were in fact contributing (i). [228]

(b) Act of 1924, s. 2; 13 Statutes 992. An agricultural parish was defined by s. 2 (2) of the Act, and this definition applies except as regards any house for the provision of which a proposal was approved by the Minister not later than April 1, 1930. With regard to houses comprised in proposals approved after that date, the definition contained in Housing Act, 1930, s. 60 (28 Statutes 434) must be substituted.

(c) 18 Statutes 998.

(d) See Housing Acts (Revision of Contributions) Order, 1926; S.R. & O., 1926, No. 1586.

(e) See Housing Acts (Revision of Contributions) Order, 1928; S.R. & O., 1928, No. 1039.

(f) See Housing (Revision of Contributions) Act, 1929; 13 Statutes 1194.

(g) S. 1; 26 Statutes 646.

(h) 13 Statutes 992.

(i) See Housing Act, 1935, Sched. IV., Part III., para. 4. As to the "appropriate normal rent" see s. 3 (1) (c), (3) of the Act of 1924. The whole of s. 3 (1) is repealed by the Housing Act, 1935, and the authority may, after August 2, 1935, fix rents in accordance with the provisions of that Act; see *ante*, pp. 78, 80. When the authority were receiving an additional contribution under the Act of 1931, the rents which the authority might charge were fixed by the Minister on the recommendation of the committee (see *post*, p. 113). The authority would have to make a contribution out of rates in order to be able to charge the rents so fixed. When before April 1, 1935, this contribution was less than the sum mentioned in the text, this lesser sum will be the contribution after that date.

Where the county council are making a contribution in respect of a house, the reference above to £4 10s. and £3 15s. should be read as a reference to the difference between those sums respectively and the amount of the contribution of the county council.

Under Housing (Rural Workers) Act, 1926.—The Minister is under an obligation to make or undertake to make contributions towards any expenses incurred by a local authority in making grants in respect of works of reconstruction and improvement carried out in accordance with a scheme made under the Housing (Rural Workers) Act, 1926 (*k*). The grant made by the local authority may take the form of a lump sum payment or the payment, during a period not exceeding twenty years, of an annual sum (*l*). But whatever form the grant takes, the contribution made by the Minister is by way of annual payments for a period of twenty years from the completion of the works in respect of which the grant is made (*k*). For the purpose of ascertaining the amount of the contribution, the sum payable in respect of the loan charges on loans raised by the authority for the purpose of making the grant is the deciding factor; and where the authority have not in fact raised a loan for the purpose of making the grant, the amount of the charges they would have had to pay if a loan had been raised must be estimated (*m*). The annual contribution which the Minister must make is one-half of the annual loan charges, actual or estimated (*n*).

Where a local authority have given assistance by way of grant in respect of works in connection with a particular house, certain conditions apply in relation to that house for a period of twenty years from the date on which it first becomes fit for occupation after the completion of the works (*o*); and on breach of any of these conditions any sums already paid on account of the grant, together with compound interest thereon as from the respective dates on which they were paid, become repayable to the local authority by the owner for the time being of the house (*p*). In the same way, where any such condition is not complied with, the local authority are themselves liable to repay to the Minister a sum equal to the amount of the contributions he has made in respect of the house, together with compound interest thereon as from the respective dates on which the contributions were made (*q*). Any sum so payable to the Minister is recoverable as a debt due to the Crown. This provision with regard to repayment of contributions does not apply where liability of the owner to repay a grant on a breach of a condition has been duly waived by the local authority, or where enforcement of the condition has been duly suspended (*r*). Moreover, the authority may prove to the Minister that they have taken all practicable steps to obtain the sum due to them from the owner by reason of the breach of the condition, and that they have been wholly or partially unable to do so; in which case the Minister may remit repayment of the sum repayable to him on account of the contribution he has made up to an amount not exceeding one-half of the amount which the local authority have failed to recover from the owner (*s*).

(*k*) See s. 4; 13 Statutes 1107. The section is continued in force until June 24, 1938, by s. 87 (1) of the Housing Act, 1935.

(*l*) See *ante*, pp. 103, 104.

(*m*) That is the estimated average annual charges on account of interest and loan redemption over a period of twenty years.

(*n*) Act of 1926, s. 4 (2); 13 Statutes 1107. The obligation of the Minister to make contributions is subject to certain conditions with regard to records, certificates, audit, etc., as to which, see Circular 756 of the M. of H. dated January, 1927.

(*o*) See these conditions, *ante*, p. 104.

(*p*) Act of 1926, s. 2 (4) (c); 13 Statutes 1104.

(*q*) *Ibid.*, s. 4 (8); *ibid.*, 1107.

(*r*) *Ibid.*, proviso (a) to s. 4 (8).

(*s*) *Ibid.*, proviso (b) to s. 4 (8).

At any time during the period of twenty years in respect of which the conditions attach to a house, the owner may, with the consent of the Minister, repay to the authority the amount of the grant together with interest thereon and by so doing may relieve the house of the burden of the conditions (t). When this is done, the local authority come under an obligation to repay to the Minister the amount of the contributions which he has already made together with interest thereon, and any sum so repayable is recoverable as a debt due to the Crown (u). [229]

It is provided by sect. 38 (2) of the Housing Act, 1935 (a), that where an authority propose to execute works in respect of which they might have made grants if the works had been executed by another person, the Minister may make or undertake to make to the authority themselves the maximum grant permissible under the Act. A dwelling in respect of which the Minister has undertaken to make such a contribution is not affected by the special conditions usually affecting dwellings in respect of which a grant has been made under the Act (b); but is governed by the conditions mentioned later (c). [280]

Under Housing Act, 1930.—The M. of H. is under an obligation to make contributions towards the expenses incurred by a local authority in connection with any action taken by them under the Act for dealing with clearance and improvement areas, or for the demolition of individual insanitary houses, or for the closing of parts of buildings, and in connection with the rehousing of persons of the working classes displaced by the authority's action (d). The amount of the contribution is ascertained by multiplying what is called "the appropriate sum" by the number of persons of the working classes whose displacement has been rendered necessary by the authority's action. The amount thus arrived at is payable annually by the Minister for a period of forty years. For the purposes of the calculation the number of persons displaced may not exceed the number for whom new housing accommodation has been provided by the authority (e). So if 100 persons are displaced from a clearance area and accommodation is at the same time provided for 80 persons only, the contribution is the appropriate sum multiplied by 80. On the other hand, if suitable accommodation is made available for 120 persons, the contribution is the appropriate sum multiplied by 100 (e).

The number of persons for whom new accommodation is deemed to have been rendered available by the new houses erected for the

(t) See *ante*, p. 104.

(u) Act of 1926, s. 4 (3), (4); 13 Statutes 1167, 1168.

(a) The effect of which is to insert a new sub-s. (2A) in s. 4 of the Act of 1926. It is doubtful which authorities may avail themselves of this new provision. On the one hand the Act speaks of authorities who "might have made grants" under the Act of 1926, which seems to indicate that only authorities within the meaning of the latter Act can be recipients of the Minister's grant. On the other hand, s. 39 of the 1935 Act contemplates that the proper recipients are authorities within the meaning of Part III. of the Act of 1935. It may be that the grant can be made only to county borough councils who fulfil both conditions.

(b) Housing Act, 1935, s. 52 (2).

(c) *Post*, p. 115.

(d) Housing Act, 1930, s. 26 (1); 23 Statutes 416. As to clearance and improvement areas, see title *SLUM CLEARANCE*; as to the demolition of, and closing of parts of, insanitary houses, see title *INSANITARY HOUSES*. The authority are under no obligation to provide new housing accommodation for persons displaced by the demolition of an individual insanitary house, but unless they do so they will receive no assistance from the Minister. By s. 19 (1) of the Housing Act, 1935, improvement areas can no longer be declared; but contributions may have been, or may be, promised in respect of expenses incurred in connection with a declaration already made.

(e) Act of 1930, s. 26 (2); 23 Statutes 417.

purpose is normally arrived at in the following way: a two-bedroomed house is treated as making available accommodation for 4 persons; a three-bedroomed house for 5 and a four-bedroomed house for 7 persons (f). So if an authority provide 10 three-bedroomed houses and 15 four-bedroomed houses, they will be taken to have made accommodation available for 155 displaced persons, and if it is shown to have been necessary to displace as many in the course of the action taken by the authority the contribution will be 155 multiplied by "the appropriate sum" (f). It is not, it seems, necessary that the persons accommodated in the new houses should be those displaced from the clearance area. The new houses may be occupied by persons who have vacated other accommodation into which the displaced persons have moved, and there may be many links in this chain of replacement.

In the normal case no house will be regarded as rendering accommodation available unless, in the case of a two-storeyed house, it has a minimum of 620 and a maximum of 950 superficial feet, or, in the case of a flat or a one-storeyed house, a minimum of 550 and a maximum of 880 superficial feet, and is provided with a fixed bath in a bathroom (g). These measurements must be calculated in accordance with rules made by the Minister (h).

The above standards with regard to the size of, and the accommodation deemed to be rendered available by, the new houses must be applied unless the Minister is satisfied that, owing to special circumstances, a departure should be made (i). [281]

In the case of persons displaced from houses in an agricultural parish the "appropriate sum" for the purposes of the above calculation is £2 10s. (k). A parish is an agricultural parish within the meaning of this rule if two conditions are fulfilled (l): (1) the net annual value of the agricultural land (m) in the parish must exceed 25 per cent. of the total net annual value of the parish (n); and (2) the population of the parish, according to the latest census return, must be less than fifty persons per 100 acres. The relevant return is the last published census before the beginning of the financial year in which the Minister approves the proposal or as the case may be the displacement from the house takes place (o).

The question as to whether a parish is or is not an agricultural parish is, under sect. 60 (3) of the Act of 1930, to be determined by the Minister, and his decision is final.

In the case of persons displaced from houses in a parish not being an agricultural parish the appropriate sum is £2 5s. in the ordinary case (p). Where, however, it is necessary to provide rehousing accommodation in buildings of more than three storeys on a site in a clearance area, or to provide such accommodation on any other site which has

(f) Act of 1930, s. 37; 23 Statutes 425.

(g) *Ibid.*, and s. 1 (2) of the Act of 1923, as amended by Sched. II. to Housing (Financial Provisions) Act, 1924; see 13 Statutes 985.

(h) As to which see circulars of the Minister, dated August 14, 1933, and March 15, 1924.

(i) Act of 1930, s. 37; 23 Statutes 425.

(k) *Ibid.*, s. 26 (3) (a); *ibid.*, 417.

(l) *Ibid.*, s. 60 (1); *ibid.*, 434.

(m) For the meaning of "agricultural land," see *ibid.*, s. 60 (2).

(n) The figures should be taken from the valuation list in force on April 1, 1929. In the case of a hereditament occupied by the Crown for public purposes the value entered in the list as the rateable value less 50 per cent. if it is agricultural land, and the net annual value if it is any other kind of hereditament; see *ibid.*, s. 60 (2).

(o) *Ibid.*, s. 60 (1), as amended by Part II. of Sched. VI. to Housing Act, 1935.

(p) Housing Act, 1930, s. 26 (3) (b); 23 Statutes 417.

been, or is to be, acquired or appropriated for the purpose, and the value of the site exceeds £3,000 an acre, the Minister may certify to that effect; and where such a certificate is granted the appropriate sum in respect of the persons for whom such accommodation is made available is £3 10s. (g). In deciding whether a building exceeds three storeys so as to attract the increased grant, a group of buildings erected with the approval of the Minister within the same curtilage is regarded as one building; and such a building or group of buildings, though not in all parts exceeding three storeys in height, is regarded as a building of more than three storeys if the Minister is satisfied that the total accommodation provided by the building could not have been provided on that site in a building containing in all parts the same number of storeys unless that number had exceeded three (g).

By para. 5 of Part III. of the Fourth Schedule to the Housing Act, 1935, it is now a condition of the right of an authority to receive a contribution under sect. 26 of the Act of 1930, that they should as from April 1, 1935, themselves make a contribution out of the general rate fund during a period, or (as the case may be) the remainder of the period, of sixty years from the completion of the house. The amount of the contribution is a sum calculated by reference to a period of sixty years equivalent to £3 15s. a year payable over a period of forty years (r). [232]

Under Housing (Rural Authorities) Act, 1931.—Sect. 1 of this Act (s) allows the Minister to make contributions towards the expenses incurred by an R.D.C. in providing houses in agricultural parishes (t) of their district for agricultural workers and persons of substantially the same economic condition. The Minister can exercise the power only on the recommendation of an *ad hoc* committee appointed by him with the approval of the Treasury. Contributions may be made only to a council who (i.) make application to the committee before November 30, 1931; (ii.) satisfy the committee that their financial resources are insufficient to enable them without assistance to make adequate provision in the agricultural parishes of their districts for meeting the need for houses for the type of persons mentioned above.

In considering applications made to them, the committee have to be guided by general directions given to them by the Minister with the approval of the Treasury (u).

The contribution under the Act is such a sum payable annually for a period of forty years in respect of each house provided by the council as the Minister, on the recommendation of the committee, may determine to be appropriate in the circumstances of the particular council. The contribution is paid in addition to, and not in substitution for, any contributions payable by the Minister under the Act of 1924 or by a county council under sect. 34 of the Act of 1930 (a). [233]

Under Housing Act, 1935.—This Act provides for three different types of contribution by the Minister. By sect. 31 he is placed under an obligation to make contributions towards the expenses incurred by an authority in providing accommodation which is required either

(g) Housing Act, 1930, s. 26 (3) (b); 23 Statutes 417.

(r) Or if the county council make a contribution, the difference between that contribution and £3 15s.

(s) 24 Statutes 371.

(t) As to which, see *ante*, p. 112.

(u) See the Appendix to the Circular of M. of H. No. 1213, August 5, 1931.

(a) 23 Statutes 422.

to abate overcrowding or made necessary by displacements occurring in the carrying out of a redevelopment plan (b). The contribution is only payable where the accommodation is provided, with the approval of the Minister, in blocks of flats on sites the cost of which exceeds £1,500 per acre, and the erection of the flats must have been begun on or after February 1, 1935. Under sect. 97, a "flat" means a separate and self-contained set of premises constructed for use as a dwelling-house and forming part of a building from some other part of which it is divided horizontally; and a "block of flats" means a building of two or more flats and which consists of three or more storeys exclusive of any storey which is used for purposes other than a dwelling-house. The cost of the site includes all expenses requisite for making the site available for the purpose of erecting flats thereon, and incurred in the construction or widening of streets, the construction of sewers, and any special works made necessary by the physical lay-out of the site (c).

The amount of the contribution is "the appropriate sum" payable annually for forty years in respect of each flat. The appropriate sum depends on the cost per acre of the site as developed. Where this cost exceeds £1500 but not £4000, it is £6; where it exceeds £4000 but not £5000, it is £7; where it exceeds £5000 but not £6000, it is £8; where it exceeds £6000, it is £8 increased by £1 for each additional £2000 or part of £2000 (d). [234]

The second type of grant is under sect. 32 of the Act, which enacts that where an authority provide accommodation for the purposes mentioned above either in new houses or in new flats which are not of the kind to attract the foregoing contribution, the Minister *may* make a contribution not exceeding £5 yearly over a period of twenty years in respect of each such house or flat, if he is satisfied that the provision of the accommodation would impose an undue burden on the authority if they received no contribution at all. In deciding this question the Minister must have regard to the amount which the authority have already spent on housing, and he must be satisfied that the burden arises because either the amount of the rents which the authority will be able to charge will be low, or there is a necessity for providing accommodation for an unusually high proportion of large families (e).

Provision for the third type of grant is made in sect. 33 which permits the Minister to make contributions towards the expenses incurred by an R.D.C. in providing new accommodation required for members of the agricultural population for the purpose of abating overcrowding in the rural district. This power can be exercised only on the recommendation of a committee (known as the Rural Housing Committee) appointed by the Minister with the approval of the Treasury. The amount of the contribution is not less than £2 nor more than £8 as the Minister may determine, payable annually for forty years in respect of each new house.

As a condition of their right to the above three types of grant, a local authority are required by sect. 34 themselves to make a contribution out of the general rate fund. This contribution is payable by equal annual instalments over a period of sixty years from the completion of the house. The amount of the contribution in the third class of grants is £1 per house provided annually for a period of forty years. In the other

(b) As to which, see s. 14.

(c) Act of 1935, Sched. III., para. 2.

(d) *Ibid.*, para. 1.

(e) *Ibid.*, s. 32 (1). For additional items which may be included, see the Minister's Memorandum "D" on the Act.

cases, it is a sum equal to one-half of the amount of the Minister's contribution provided annually for the period of forty years or (as the case may be) the period of less than forty years during which the Minister's contribution is payable. An R.D.C. will have to ascertain the present value of £1 annually for forty years and then spread this sum equally over a period of sixty years. This will represent the amount of their contribution out of rates. In other cases the present value of the Minister's contributions will have to be ascertained and this sum spread equally over a period of sixty years. One-half of this sum will represent the amount of the authority's annual contribution out of rates.

Where in carrying out a redevelopment plan, accommodation is rendered necessary by displacements from houses which are unfit for human habitation and not capable at reasonable expense of being rendered so fit, contributions are payable under sect. 26 of the Housing Act, 1930 (f), as extended by sect. 35 of the Act of 1935, and in such cases the local authority will not be entitled to receive any contributions under sects. 31—33 of that Act. [235]

General Conditions in Housing Act, 1935, as to Contributions.—

All contributions made by the Minister under the Housing Acts, 1919 to 1931 (g), or the Housing Act, 1935, are payable at such times and in such manner as the Treasury may direct, and subject to such conditions as to records, certificates, audit or otherwise as the Minister may, with the approval of the Treasury, impose (h).

It was originally provided that some of these contributions, particularly under the Act of 1924 and the Act of 1930, could be made only if the houses in question satisfied the special conditions mentioned in the material Act. The Housing Act, 1935, repeals these special conditions (i), and sect. 51 (1) provides that in relation to all houses in respect of which an authority are required to keep a Housing Revenue Account (k), which include all those with regard to which "Exchequer contributions" are payable, the following conditions shall be observed :

- (i.) the authority must secure that in the selection of their tenants a reasonable preference is given to persons who are occupying insanitary or overcrowded (l) houses, have large families or are living under unsatisfactory housing conditions (m) ;
- (ii.) in fixing rents the authority must take into consideration the rents ordinarily payable by persons of the working classes in the locality, but may grant to any tenant such rebates from rent, subject to such terms and conditions as they may think fit (n) ;
- (iii.) the authority must from time to time review rents and make such changes of rents and rebates as circumstances may require (o) ;
- (iv.) it must be a term of every letting that the tenant shall not assign, sub-let or otherwise part with possession of the

(f) 23 Statutes 416.

(g) See definition in s. 97 (1) of the Act of 1935.

(h) Housing Act, 1935, s. 48. See these conditions in Appendix I. to the Minister's Memorandum "E" on the Act.

(i) See s. 52 (1) and Scheds. V. and VII. to the Act.

(k) See *ante*, p. 82.

(l) See Housing Act, 1935, s. 2.

(n) *Ibid.*, s. 51 (5).

(m) Act of 1935, s. 51 (2).

(o) *Ibid.*, s. 51 (6).

premises, or any part thereof, except with the consent in writing of the authority. The authority may not give such consent unless it is shown that no payment other than a reasonable rent has been, or is to be, received by the tenant in consideration of the transaction (*p*);

- (v.) the authority must secure that a number of their houses equal to the number in respect of which the county council have undertaken to make contributions are reserved for members of the agricultural population (*q*);
- (vi.) the authority must secure that a number of houses equal to the number in respect of which the authority have received assistance under the Act of 1926, or the Minister has undertaken to pay a contribution under that Act to an authority who propose themselves to execute works in respect of which (if executed by another person) they might have made grants under that Act, are reserved for persons whose incomes are such that they would not ordinarily pay a rent in excess of that paid by agricultural workers in the district (*r*).

By sect. 40 (1) and Part I. of the Fourth Schedule to the Housing Act, 1935, the following are Exchequer contributions within the meaning of Part III. and the Third and Fourth Schedules to that Act, viz. those made under (1) sect. 7 of the Act of 1919; (2) sect. 1 (1) (b) of the Act of 1923 as originally enacted or as amended by sects. 1, 2 of the Act of 1924; (3) sect. 1 (3) of the Act of 1923; (4) the new sect. 4 (2A) of the Act of 1926 to an authority who are themselves executing works; (5) sect. 26 of the Act of 1930; (6) sect. 1 of the Act of 1931; or (7) Part III. of the Act of 1935.

All these grants have been already explained in this article, and, as previously mentioned, it is a condition of the right of an authority to receive any of them that the authority shall as from April 1, 1935, make out of the general rate fund the various contributions already referred to in dealing with the various Acts (*s*). [236]

Review of Exchequer Contributions.—In the year 1937 after October 1st, and in each third succeeding year after the same date, the Minister must take into consideration, in connection with contributions which he is required or authorised to make under sect. 26 of the Act of 1930, and sects. 31—33 of the Act of 1935, first the amount of expenses, towards which contributions would be payable, which are likely to be incurred in the period of three years from April 1 next following the time of his consideration; and secondly the amount of such expenses incurred in connection with operations already carried out (*t*). In performing this duty the Minister must consult with such associations of local authorities as appear to him to be concerned, and with any local authority with whom consultation appears to him to be desirable (*u*).

After each such consideration the Minister must, with the approval of the Treasury, prepare and lay before the House of Commons a draft of an order providing, in relation to each of the contributions, either (i.) for

(*p*) Act of 1935, s. 51 (7).

(*q*) *Ibid.*, s. 51 (4). See also *ante*, p. 103.

(*r*) *Ibid.*, s. 51 (3).

(*s*) *Ibid.*, s. 41. By failing to make any one of their contributions the authority, it seems, lose their right to all Exchequer contributions.

(*t*) *Ibid.*, s. 36 (1).

(*u*) *Ibid.*, s. 36 (5).

the cesser of his obligation or power to make contributions in the case of new houses which have not been rendered available until after a date specified in the order; or (ii.) for the continuance of his obligation or power without alteration; or (iii.) for the alteration (by way of reduction) of the amount of the contributions or of the period during which he may undertake to pay them, or of both. The alteration can be made only in respect of houses which have not been rendered available until after a date specified in the order.

The date to be specified in the order must, in the case of the consideration which is to take place in 1937, be March 31, 1938; and in the case of a subsequent consideration a date not earlier than the expiration of six months from the date on which the draft order is laid before the Commons (a). If a resolution approving the draft order is passed by the Commons within one month from the date on which the draft is laid, the Minister must make an order in the terms of the draft. In any other event he must, as soon as may be after the expiration of the month, prepare and lay a new draft; and the same provisions will apply to this new draft as to the draft which was originally laid (b). [237]

See also "Withholding of Contributions," p. 119, *ante*.

Reimbursement of Losses under Guarantees.—Sect. 92 (1) (b) of the Housing Act, 1925 (c), enables a local authority for Part III. of the Act (d), or a county council, to undertake to guarantee the repayment to certain societies mentioned in the section of advances (with interest thereon) made by the society to any of its members for the purpose of enabling the members to build or acquire houses. The power may be exercised in respect of houses outside the area of the authority or council, but it extends only to such houses as fulfil the conditions prescribed in sub-sects. (2) and (4) of sect. 92. These conditions are that: (1) the estimated value of the fee simple in possession free from incumbrances of the house must not be more than £1500 (e); (2) the authority or council must be satisfied that the house will be in all respects fit for human habitation; (3) the authority or council must be satisfied that the superficial area of the house will be not less than the minimum prescribed in sub-sect. (2).

Sect. 2 (1) of the Housing (Financial Provisions) Act, 1933 (f), empowers the Minister, in certain cases where an authority or council submit proposals to him, to undertake to reimburse to the authority or council not more than one-half of any loss sustained by them under the terms of the guarantee.

The proposals should be in the prescribed form (g). It will be observed that the form provides for a proposal of a general character covering a certain number of houses and stating a maximum inclusive cost per house. If the Minister approves of a general proposal submitted to him, the authority or council may proceed to give specific guarantees within the scope of the general proposal, and it is not necessary that specific approval of the Minister should be obtained before entering into a guarantee with a particular society in respect of

(a) Housing Act, 1935, s. 36 (3).

(b) *Ibid.*, s. 36 (2).

(c) 13 Statutes 1054. As to this power, see *ante*, p. 102.

(d) That is, the council of a borough or urban or rural district.

(e) Or £800 if the guarantee is given after October 31, 1935; see s. 76 (2) of Housing Act, 1935.

(f) 26 Statutes 646.

(g) As to which see Circular of the M. of H., No. 1334 of May 22, 1933.

a particular advance. A quarterly progress return must, however, be rendered on the last day of March, June, September and December of each year, in the prescribed form, giving particulars of the specific guarantees made by the authority or council in pursuance of the approved general proposals. [238]

The power given by sect. 92 (1) (b) of the Act of 1925 is unqualified in the sense that it enables an authority or council to give a guarantee in respect of the full amount of the principal and interest of an advance made by a society to a member. But the Minister's power to undertake to share any loss sustained as a result of giving the guarantee is exercisable only when the Minister is satisfied that the guarantee extends only to the principal of, and the interest on, the amount by which the sum to be advanced by the society exceeds the sum which would normally be advanced by it without any such guarantee (*h*). The Minister will assume that a society will normally advance, without any guarantee, 70 per cent. of the valuation of the house (*i*), and it therefore follows that the power of the Minister will be exercised only in so far as the guarantee given by the authority or council extends to capital and interest advanced by the society in excess of 70 per cent. of the valuation. The Minister must also be satisfied that the liability of the local authority or county council under the guarantee cannot be greater than two-thirds of such excess; that is, the excess of the amount advanced by the society over 70 per cent. of the valuation.

It is understood that the societies belonging to the National Association of Building Societies have undertaken to make advances up to 90 per cent. of the valuation on having the guarantee of the authority or council as to two-thirds of the excess over 70 per cent. Suppose therefore that the valuation of the house is £500, the society advances £450 (that is 90 per cent. of £500), to the member. The guarantee of the authority or council will take the form of a covenant by them to pay on the default of the member the sum equal to two-thirds of the difference between the actual deficiency and the deficiency which would have arisen if the amount advanced had been only £350 (that is, 70 per cent. of the valuation) instead of £450. In circumstances of this kind the Minister may undertake to contribute one-half of any loss sustained by the authority or council by reason of their being called on under their guarantee. [239]

Again, the power conferred by sect. 92 (1) (b) of the Act of 1925 is quite general in respect of the character of the house with regard to which the authority may give a guarantee. But the power of the Minister can be exercised only in relation to houses intended to be let to persons of the working classes (*k*). The Minister has intimated that authorities and councils should satisfy themselves that the cost of any houses in respect of which it is intended to make a proposal will be low enough to allow of rents within the capacity of the members of the working classes.

The Minister will not, of course, be able to pay grants under sect. 2 of the Act of 1933, in respect of houses of a greater superficial area than the minima prescribed by sect. 92 (2) of the 1925 Act. He has further intimated his intention that in a normal case he will not approve of proposals which relate to houses of a larger superficial area than 800 feet (700 feet in the case of two-bedroomed houses).

(*h*) See terms of s. 2 of Act of 1933; 26 Statutes 646.

(*i*) See para. 7 of circular already mentioned.

(*k*) See terms of s. 2 of Act of 1933; 26 Statutes 646.

A proviso to sect. 2 of the Act of 1933 also requires the proposals made to the Minister to make provision for securing that the number of houses in relation to the area occupied or intended to be occupied, by and in connection with them, will not exceed twelve to the acre and that each of them will be provided with a fixed bath. Fulfilment of both or either of these conditions may be dispensed with by the Minister in any particular case.

In giving a guarantee the authority or council should use the prescribed form. [240]

Withholding of Contributions.—If at any time the Minister is satisfied that a local authority have either (i.) failed to discharge any of the duties imposed on them by the Housing Acts, or (ii.) failed to observe any condition subject to which they are entitled to receive an Exchequer contribution, the Minister may reduce the amount of any Exchequer contribution payable to the authority, or suspend or discontinue the payment of any such contribution as he may think just (*l*). If he reduces, suspends, or discontinues the payment of any Exchequer contribution on the ground that the local authority have failed to discharge a duty imposed on them by sect. 51 of the Housing Act, 1935, to reserve accommodation for members of the agricultural population or other persons, the county council are not under any liability to make any contribution in respect of any year in which the Exchequer contribution is not paid in full (*l*). [241]

LONDON

The Housing Acts previously mentioned, except the Housing (Rural Workers) Act of 1926 and the Housing (Rural Authorities) Act of 1931, apply generally to London, subject to certain special provisions as to the distribution of functions between London local authorities, as to which see HOUSING. The special London provisions, so far as they affect the subject of this article, are as indicated below.

Housing, etc., Act, 1923, s. 1 (6) (m).—The L.C.C. can supplement the Exchequer contribution by making a payment to a borough council not exceeding £3 a house annually for not more than twenty years. [242]

Housing (Financial Provisions) Act, 1924.—Under sect. 2 (5) (*n*) (in part repealed by the Act of 1935) the L.C.C. may supplement the Government contributions in respect of houses provided by the Common Council of the City or borough councils, up to £2 5*s*. annually for a period not exceeding forty years. This amount was reduced to £1 17*s*. 6*d*. by the Housing Acts (Revision of Contributions) Order, 1926, as respects houses not completed before October 1, 1927, and to £1 10*s*. by order of 1928 as respects houses not completed before October 1, 1929. By the Sched. to the Housing (Revision of Contributions) Act, 1929 (*nm*), the amount was restored to £1 17*s*. 6*d*.

Sect. 14 (*o*) (in part repealed by the Act of 1935). The L.C.C. and the common council or any borough councils may make agreements whereby the common council or the borough council may contribute towards the provision of houses by the L.C.C., within or without the county, to meet any special needs of the City or borough. [243]

(l) Act of 1935, s. 49.

(n) *Ibid.*, 994.

(nm) *Ibid.*, 1194.

(m) 13 Statutes 986.

(o) *Ibid.*, 1000.

Housing Act, 1925.—Under sect. 80 (3) (p), as amended by sect. 38 of the L.C.C. (General Powers) Act, 1926 (q), agreements may be made by the L.C.C. and the Common Council or a borough council for the carrying out of housing operations under Part III. of the Act of 1925, and for the apportionment of expenses.

Sect. 92 (r) (Power of Local Authority to make Advances). In London the L.C.C. are the sole local authority for the purposes of this section (sect. 92 (5)). [244]

Housing Act, 1930.—Under sect. 16 (5), proviso (ii) (s), the L.C.C. may contribute towards expenses incurred by a borough council in dealing with clearance areas in certain circumstances. Sect. 16 (8): the L.C.C., and the Common Council or borough council may make agreements with respect to contributions towards expenses under Part I. of the Act of 1930. Sect. 31 (3) (b) (t): the L.C.C. and borough councils are local authorities for Part III. of the Act, and contributions thereunder are payable to the authority which provides rehousing, notwithstanding that the operations causing the displacement were initiated or carried out by the other authority. Sect. 48 (u) provides that, by agreement, contributions may be paid in respect of the provision of houses by the L.C.C. outside London to meet the special needs of the other party to the agreement, or by the other party within their area to meet the needs of the L.C.C. [245]

Housing Act, 1935.—Part III. (Financial Provisions) of the Act and Parts II. and III. of the Fourth Schedule to the Act are by sect. 50 to be modified in their application to London as shown in Part IV. of the Fourth Schedule. The general effect of these provisions is that Exchequer contributions will not be payable to a borough council under sect. 7 of the Act of 1919; but will be paid by the L.C.C. and debited to their Housing Revenue Account. In so far as the total losses so paid, when added to the loss on any scheme of the county council to which sect. 7 extends, exceed the produce of a 1*d.* rate for the year on London, exclusive of the City, the deficiency will be made good by the Exchequer contribution. The borough council must contribute in respect of any such scheme the loan charges for the year in respect of expenditure which was not approved by the Minister for the purpose of the Exchequer contribution.

Where a contribution is made to the Common Council, the L.C.C. or a borough council, for any year under sect. 1 (6) of the Act of 1923, sect. 2 (5) of the Act of 1924, sect. 80 (3) of the Act of 1925, sect. 16, proviso to sub-sect. (5) or sub-sect. (8) of the Act of 1930 (a), or sect. 22 of the Housing Act, 1935, the amount of the contribution to be made by that council for the year, in respect of the scheme or house, is to be reduced by the contribution so made to them (para. 3).

A new provision in sect. 22 (1) requires the L.C.C. to pay to a borough council in each financial year ending on March 31 during the period from May, 1934, to March, 1941, one-half of their expenses in enforcing those provisions of Part I. which relate to overcrowding, and of their expenses in the remuneration of persons specifically employed in the

(p) 13 Statutes 1046. Also amended by Sched. V. to Act of 1930.

(q) 11 Statutes 1882.

(s) 23 Statutes 408.

(u) *Ibid.*, 430.

(a) All these enactments have been already referred to.

(r) 13 Statutes 1054.

(t) *Ibid.*, 421.

inspection of the borough as to overcrowding and the preparation of the report thereon. But the borough council must comply with the conditions set out in the four provisos to the sub-section.

Sect. 22 (2) relates to agreements between the L.C.C. and the Common Council or a borough council enabling an agreement to be made for the exercise by one party of powers conferred by Part I. of the Act of 1935 on the other party, and for the payment of contributions towards expenses. [246]

HOUSING TRUST

See HOUSING ASSOCIATIONS.

HUNDREDS, LIBERTIES, ETC.

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See also title : AREAS OF LOCAL GOVERNMENT.

General.—The hundred is an ancient administrative division of a county, which is said to have been instituted by King Alfred, and which certainly originated long before the Norman conquest. The hundred, which in the North of England is known as the wapentake, was probably an area in which the inhabitants of the several townships or settlements were organised for purposes of defence, the maintenance of order, and the administration of justice. With the establishment of the feudal system of land tenure, involving military responsibility, the importance of the hundred as a unit in the organisation of the defence of the realm appears to have declined, but until the nineteenth century the hundred continued to be a unit in the organisation of police services, in the maintenance of order, and in the administration of justice. At an early date, the hundreds of certain counties acquired financial responsibilities in relation to the provision and repair of bridges and roads.

In general, the hundred was the only administrative unit, apart

from the boroughs, which was intermediate in scale between the county and the parish (*a*); and when, in the eighteenth century, special incorporations for poor law purposes were formed, by local Acts, for the improvement of poor law administration, the hundred was frequently selected as the area for which an incorporation was constituted. Later, a natural tendency to build on existing foundations led to the hundred often being adopted as the nucleus of a poor law union (*b*) formed under the Poor Law Amendment Act, 1834, or of a petty sessional division; and even to-day the boundaries of some of the petty sessional divisions and rural districts follow the boundaries of ancient hundreds.

In the counties of Sussex and Kent groups of hundreds exist, known in Sussex as rapes, and in Kent as lathes, which, in view of the special liability of those counties to overseas invasion, were probably of military origin.

Hundreds were formerly divided into sub-divisions, known as "tithings," each of which was approximately one-tenth part of the hundred, but these sub-divisions now serve no practical purpose. Some hundreds were divided into half-hundreds and these divisions have occasionally been perpetuated in franchises, liberties, etc.

In the census of 1841 parishes are grouped according to the hundreds in which they were comprised and the lathe is also shown, but hundreds have now ceased to exist as a unit of local government, and when a district or parish is altered by the addition of an area which is situated in another hundred it is now considered unnecessary to adjust the boundary of the hundreds. [247]

Property.—Although the hundred is now mainly a matter of historical interest, occasions may still arise when existence of the hundred must be recognised. Thus sect. 64 (1) of the L.G.A., 1888 (*c*), transferred to the county council property belonging to quarter sessions, or held by the clerk of the peace, or by any county justices for any public uses and purposes of the county or any division thereof. By sect. 100 (*d*), the term "division of a county," in relation to the property of quarter sessions, includes any hundred, lathe, wapentake or other like division (*e*). It may be necessary, therefore, in deducing the title to property so transferred to go back to the ownership by, or on behalf of, the hundred. [248]

Rates.—Sect. 3 (i) of the L.G.A., 1888 (*f*), transferred from quarter sessions to the county council the power of making, assessing and

(*a*) In certain cases lords of manors became vested with administrative and quasi-judicial duties in relation to the public; e.g. the inspection and control of weights and measures, testing of ale and bread. Possibly some of these functions had their origin in market franchises.

(*b*) Most of the poor law unions in Norfolk and Essex corresponded with the hundreds into which those counties were divided.

(*c*) 10 Statutes 738.

(*d*) *Ibid.*, 761.

(*e*) The ancient divisions of a county, known as Ridings in Yorkshire, and as Parts in Lincolnshire (e.g. the Parts of Lindsey), appear to have arisen owing to the difficulty of administering such large areas as single counties, with the result that courts of quarter sessions were held in more than one centre for portions of the county. Where the meetings of justices acquired customary independence as separate sessions, or the divisions of the county had already received statutory recognition (e.g. in the Statute of Bridges in the case of Yorkshire), the divisions were perpetuated by the L.G.A., 1888, on the creation of county councils.

(*f*) 16 Statutes 688.

levying (*inter alia*) hundred rates, and the application and expenditure of such rates, but sect. 1 (1) of the R. & V.A., 1925 (g), seems to deprive a county council of the power of making a hundred rate, and any sum required for the purposes of a hundred rate should be levied as an additional item of the general rate under sect. 2 (5) of that Act. [249]

Bridges.—A hundred may be liable by custom to maintain a bridge, and, *semble*, if a custom arising from immemorial usage is established, the liability would not be displaced by evidence of an alteration in the boundaries of the hundred within legal memory (h). Sect. 2 of the Statute of Bridges, 1530-1 (i), after reciting that in many parts of the realm it could not be known and proved what hundred, riding, wapentake, city, borough, town or parish, or what person or body politic ought to repair bridges (in the highways) (k), placed on the inhabitants of the shire or riding the liability for the repair of bridges, outside cities and corporate towns, where liability could not be proved to rest on one of the above areas or persons. This section appears to have been declaratory of the common law, but it made clear the proposition that the burden of proving a bridge to be a hundred or other special bridge rests on the county, city or town. Later the law was altered by sect. 5 of the Bridges Act, 1803 (l), which excludes from the category of county bridges which the inhabitants of the county are liable to maintain, bridges built by individuals, private persons or bodies politic or corporate, after June 24, 1803, unless the requirements of the statute have been complied with. Sect. 2 of the Bridges Act, 1814 (m), applies to hundred bridges the provisions of the Bridges Act, 1803, except such provisions as relate to bridges built after the passing of the Act of 1803. In sect. 5 of the Highway Act, 1835 (n), "county bridge," which term is used to describe those bridges which, by that section, are excluded from the definition of "highway," includes hundred bridges (o). By sect. 34 (2) of the L.G.A., 1888 (p), the liability for the repair of any hundred bridges situate within a county borough was transferred to the corporation of the borough. Sect. 134 of the L.G.A., 1929 (q), excepts from the definition of "county bridge," for the purposes of that statute, bridges which a county council are liable to repair only by reason of the fact that the bridge is repairable by the inhabitants at large, and that the road carried by the bridge is, for the time being, a county road. This was because a bridge carrying a road was included in the definition of "road," but a hundred bridge repairable by the county council seems to be covered by the definition of "county bridge" if it does not carry a county road.

Hundred bridges were of importance in the counties of Sussex and Kent, and were dealt with by legislation applicable to those counties only. By sect. 13 of the County of Sussex Act, 1865 (r), quarter sessions in the western division of the county were empowered to levy separate rates, in the nature of county rates, on the several rapes in

(g) 14 Statutes 617.

(h) *R. v. Oswestry* (1817), 6 M. & S. 361; 26 Digest 577, 2630.

(i) 9 Statutes 229.

(k) See *ibid.*, s. 1.

(l) 9 Statutes 258; Lord Ellenborough's Act.

(n) *Ibid.*, 50.

(m) *Ibid.*, 263.

(o) *R. v. Chart and Longbridge* (1870), L. R. 1 C. C. R. 237; 26 Digest 571, 2631. But see ss. 21, 22 of the Highway Act, 1835 (9 Statutes 58, 59), containing provisions as to county bridges.

(p) 10 Statutes 712.

(q) *Ibid.*, 971.

(r) 10 Statutes 556.

West Sussex for the repair and maintenance of bridges in the several rapes. This power was transferred to the county council of West Sussex by sect. 3 of the L.G.A., 1888, but is believed not to be exercised at the present day. In Kent the making of hundred rates for the repair of hundred bridges was abolished by sect. 10 of the Annual Turnpike Acts Continuance Act, 1875 (*s*), and the hundred bridges were thereafter to be deemed county bridges. [250]

Highways.—It is doubtful whether any common law liability to repair highways rested on a hundred. For example, in no case prior to the Highways and Locomotives (Amendment) Act, 1878 (*t*), does a hundred seem to have been indicted and convicted for the non-repair of a highway (*u*), but in relation to certain areas, chiefly in Lancashire, where hundred bridges existed, it was thought desirable that the then new scheme of paying one-half the cost of maintenance of main roads from the county fund should be modified so as to permit some or all of the main roads to be a charge on the several hundreds. Accordingly sect. 20 of the Highways and Locomotives (Amendment) Act, 1878, enabled the county authority to declare main roads to be repairable by a hundred (so far as related to the contribution to be paid to the highway authority under s. 13 of the Act of 1878), and the charge then fell on a hundred rate levied in the same manner as the rate for the repair of the hundred bridges. This section was repealed by the L.G.A., 1929 (*a*), but still remains on the statute book by virtue of sect. 11 (18) of the L.G.A., 1888 (*b*), which applied sect. 20 of the Act of 1878 as if it were re-enacted in sect. 11 and in terms made applicable to that section. In *R. v. Dalby* (*c*) it was recognised that the expenditure of the Lancashire county council on main roads could still be charged in part to each hundred, but it is understood that this course is no longer adopted by the county council. [251]

Distress.—In cases where cattle are distrained upon they may not be driven out of the hundred, rape, wapentake or lathe in which they are taken except to a pound overt in the same shire, not above three miles from the place where the distress is levied (*d*). Such cattle may be driven to a pound within the hundred, although it is more than three miles from the place where the distress is taken (*e*). [252]

High Constables and Riot Damage.—The High Constables Act, 1869 (*f*), virtually abolished the office of high constable of a hundred, and substituted the chief constable of the county as the officer to be served with process in respect of claims against the hundred. The liability of a hundred to pay compensation in respect of damage by rioters was transferred to justices in quarter sessions in counties, and

(*a*) 38 & 39 Vict. c. xciv.

(*b*) 9 Statutes 166.

(*c*) *R. v. Yarton* (1868), 1 Sid. 140 (26 Digest 380, 1065), has been cited as an authority for indicting a hundred for non-repair of a highway, but this case is imperfectly reported and the effect of it is obscure; see *R. v. Kingsmoor* (1823), 2 B. & C. 190 (26 Digest 863, 867); *R. v. Midville* (1848), 4 Q. B. 240 (26 Digest 359, 360).

(*d*) 10 Statutes 1016.

(*e*) *Ibid.*, 695.

(*f*) [1892] 2 Q. B. 736; 26 Digest 306, 1226.

(*g*) Impounding of Distress Act, 1554, s. 1; 5 Statutes 139.

(*h*) *Coaker v. Willcocks*, [1911] 2 K. B. 124; 18 Digest 341, 753.

(*i*) 12 Statutes 829.

to municipal corporations in boroughs, by sect. 2 of the Riot (Damages) Act, 1886 (*g*), and in counties the liability was again transferred from quarter sessions to county councils by sect. 3 (xiv.) of the L.G.A., 1888 (*h*). [253]

Sheriffs.—Sect. 19 (1) of the Sheriffs Act, 1887 (*i*), provides that as respects the powers and duties of sheriffs, a hundred or wapentake shall not be severed from the county. [254]

Liberties and other Ancient Areas. *Liberties.*—A liberty was originally the possession in the hands of a subject of a part of the Royal privilege or prerogative, frequently in connection with the holding of courts independently of the King's courts; the term "liberty" also denotes the area in which such privileges are exercised. Liberties developed into separate administrative units, and were in a large measure distinct from the counties of which geographically they formed part. Liberties were merged in counties for county police purposes by sect. 27 of the County Police Act, 1839 (*k*), and were merged in administrative counties for all purposes of the L.G.A., 1888, by sect. 48 of that Act (*l*). Two of the ancient liberties, namely the Isle of Ely and the Soke of Peterborough were constituted separate administrative counties by sect. 46 of the Act of 1888.

The appointment of justices in liberties was vested in the Crown by sect. 2 of 27 Hen. 8, c. 24 (*m*), in part repealed by the Supreme Court of Judicature (Consolidation) Act, 1925 (*n*). Provision is made by sect. 1 of the Liberties Act, 1850 (*o*), for the union of a liberty with the county in which it is situated by Order in Council made on the petition of the county justices or of the liberty justices. The power of petitioning has not apparently been transferred to county councils by the L.G.A., 1888, and the procedure of the Act of 1850 would be still available if a suitable case arose. This Act does not appear to have been often used; but orders have been made dealing with the liberties of Cawood, Wistow and Otley, of Havering-atte-Bower, and of the Tower of London. In the case of the liberty of St. Alban, special provision was made by the County of Hertford and Liberty of St. Alban Act, 1874 (*p*).

For statutes dealing with individual liberties, reference should be made under the name of the liberty to the Consolidated Index to the Statutes, published by H.M. Stationery Office.

Sokes.—A "soke" is substantially synonymous with a liberty, and comprises an area in which special privileges as to government and administration of justice had been acquired by a subject to the exclusion

(*g*) 12 Statutes 844.

(*h*) 10 Statutes 680.

(*i*) 17 Statutes 1113.

(*k*) 12 Statutes 781; and see title COUNTY POLICE.

(*l*) 10 Statutes 726. See s. 48 (4) for special provisions as to powers and duties of county quarter sessions and of justices out of sessions in the Cinque Ports. See also the title CINQUE PORTS.

(*m*) 11 Statutes 222.

(*n*) S. 226 and Sixth Schedule; 4 Statutes 201, 207.

(*o*) 10 Statutes 550. For special provisions as to the liberties of (1) Ripon, (2) the Soke of Southwell, and (3) the Isle of Ely, see the Liberties Act, 1836; 4 Statutes 40. This statute dealt also with the liberties of Cawood, Wistow and Otley, as to which see now Order in Council of 1864 under the Liberties Act, 1850; 10 Statutes 551.

(*p*) 10 Statutes 562.

in some measure of the Royal prerogative and of the jurisdiction of county justices. [255]

Franchises.—A "franchise" is of similar nature to a liberty, *i.e.* it is a part of the Royal prerogative subsisting in the hands of a subject, arising from a Royal grant, usually a charter, or from prescription (which pre-supposes a lost grant). In general a subsisting franchise relates to a monopoly of some kind, *e.g.* a market or ferry, or a right to take tolls or to receive and retain articles cast up by the sea. As to franchise coroners, see title CORONERS. [256]

Honours.—An "honour" was a seignory of several manors held under one lord paramount, and occasionally carried with it judicial or quasi-judicial functions, particularly in relation to inquests and the appointment of coroners. The Honour of Pontefract is an example. [257]

Duchies.—A "duchy" is another instance of the vesting of the Royal prerogative in a subject, the most important surviving duchies being those of Lancaster and Cornwall, which are both attached to the Crown. For the numerous statutes dealing with these duchies, see the Index to the Statutes (*q*). [258]

Palatinates.—A "palatinate" is an area in which Royal prerogatives are delegated to a special subject. The counties palatine of England are Chester, Durham and Lancaster, and, of these, the counties of Chester and Durham are counties palatine by immemorial custom; Lancaster was created a county palatine by Edward III., and the palatine rights have attached to the Crown (but separate from other possessions of the Crown) since the reign of Henry IV. Palatinate powers in Cheshire were largely abrogated on the extension of the jurisdiction of the courts at Westminster to the county palatine by the Law Terms Act, 1880 (*r*). The palatinate of Durham is vested in the Crown as a separate franchise and royalty by the Durham (County Palatine) Act, 1836 (*s*), and the palatine jurisdiction of the Bishop of Durham has been abrogated by the same and later statutes (*t*).

The palatine of Lancaster is regulated by numerous statutes, for which reference should be made to the Index to the Statutes under the heading: Lancaster—County Palatine. [259]

Marches.—The "marches," which were an ancient military division of no modern significance, were largely comprised in the Counties Palatine, and were areas whose inhabitants were under special responsibilities for local defence against the Scots and Welsh. Grants of lands from the Crown in those areas carried special feudal duties in that respect. [260]

Forests.—A "forest" is in the nature of an incorporeal hereditament, and in its origin was the right of keeping, for the purpose of venery and hunting, the wild beasts and fowls of forest within the limits of the forest; the right might subsist in respect of lands not vested in the owner of the forest, and carried with it the power of holding courts and enforcing the Forest Law. Towns, villages and enclosed lands may be subject to forest rights. Generally a forest was a Royal

(*q*) The Duchy of Lancaster statutes are indexed under Lancaster (2); the Duchy of Cornwall statutes are enumerated in Appendix II. Note that the Duchy of Lancaster is an entirely separate entity from the Palatinate of Lancaster.

(*r*) 4 Statutes 22.

(*s*) *Ibid.*, 30.

(*t*) For the statutes relating to the palatinate of Durham, see Index to the Statutes under Durham—County Palatine.

prerogative but might vest in a subject; as, however, many lands were dis-afforested, and the creation of new forests was checked by the Charter of the Forest (*u*), the number of forests in the hands of subjects became very small. For practical purposes forests are now limited to those vested in the Crown and managed as part of the Crown Lands; for the statutes regulating the forests so managed (*a*), see the Index to the Statutes, Appendix III., Part III. The fact that unenclosed land forms part of a forest does not, of itself, confer any right of access on the public, but in the case of many forests access to unenclosed parts is permitted subject to the provisions of the statutes referred to above, or, in the case of land which is common or waste land within the meaning of sect. 193 of the Law of Property Act, 1925 (*b*), subject to the provisions of that section. [261]

Townships, Chapelries, Precincts.—A "township" is probably the oldest unit of minor local government and preceded the ecclesiastical parish; it was normally a centre of some importance as regards population and came under the jurisdiction of a tything man, headborough or borsholder; a township was also referred to as a tything or vill, and minor centres of population, known as hamlets, were sometimes attached to townships. The ecclesiastical parish, when formed, was sometimes coterminous with the township, but in the south of England it happened frequently that a township was divided into more than one ecclesiastical parish, whereas in the north the reverse was the case, and the tendency was for more than one township to be included in one ecclesiastical parish. The growth of the manorial system and the gradual transfer of civil functions to the vestry and to the churchwardens reduced the importance of the township, which for practical purposes has now been replaced by the civil parish; in the north of England, however, the civil parish is still referred to as the township. Minor divisions within parishes were chapelries and precincts. The former came into existence where subsidiary churches or chapels-of-ease were provided in large parishes and became the centres of such functions of government as centred round the church, the vestry and the churchwardens; "precincts" were areas immediately contiguous to royal palaces or to the establishments of ecclesiastical and other dignitaries where the local jurisdiction of the parish or borough officials (such as overseers and constables) was ousted and a measure of autonomy existed.

The foregoing areas are now of little practical importance, but references to them still appear in unrepealed portions of the older statutes, e.g. sect. 77 of the Lighting and Watching Act, 1883 (*c*), applies the statute among other areas to any wapentake, division, city, borough, liberty, township, market town, franchise, hamlet, tithing, precinct and chapelry or parts within a parish, and provides for the functions of a churchwarden being performed by any chapelwarden, overseer or other person usually calling any meeting on parochial business. As to the present position with regard to the adoption and application of this Act, see title LIGHTING AND WATCHING. [262]

(*u*) 25 Edw. 1, c. 1 (9 Henry 3 Ruffhead), confirmed by 28 Edw. 1; 3 Statutes 85, 48.

(*a*) Including the New Forest (Hants), Forest of Dean (Glos.), Epping Forest (Essex), Sherwood (Notts), Windsor (Berks), Exmoor (Devon and Somerset) (now disafforested), and other smaller forests.

(*b*) 15 Statutes 871.

(*c*) 8 Statutes 1214.

London.—In the census of 1841, most of the parishes outside the City are shown as comprised in the hundred of Ossulstone.

Liberties also existed in London, such as the Tower of London and the liberty of the Rolls, but were dealt with by Orders in Council and schemes under the London Government Act, 1899, sect. 17 (1) of which (d) requires that every part of the administrative county of London outside the City shall be situate in some borough and some parish. [263]

(d) 11 Statutes 1235.

HUTS

See TENTS, VANS AND SHEDS.

HYDRANTS

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See also titles : FIRE PROTECTION ;
LONDON FIRE BRIGADE ;
WATER SUPPLY.

P.H.A., 1875.—It is the duty of the council of every county borough, non-county borough and urban district to cause fireplugs and all necessary machinery and assistance for securing an efficient supply of water in case of fire to be provided and maintained in their area, and for this purpose they may enter into agreements with any water company or person (a).

An R.D.C. may be invested with this duty in relation to the whole or a portion of their district by order of the Minister of Health (b). It is the practice of the Minister to restrict the making of orders to districts in which the need for fireplugs is shown and in which the council are prepared to take action, as the duty is imperative, and may be enforced by indictment or information by the Attorney-General. But an R.D.C. may provide their area, or any part of it, with a supply of water for public and private purposes (c), and, in connection with any such supply, the provision of fireplugs by the council would appear to be authorised. [264]

(a) P.H.A., 1875, s. 66 ; 13 Statutes 653. S. 124 of the Towns Improvement Clauses Act, 1847 (13 Statutes 572), is similar, but is in force only where incorporated in a local Act relating to an area.

(b) S. 270 (13 Statutes 741) ; L.G.A., 1894, s. 25 (5) (10 Statutes 795) ; L.G.A., 1933, s. 272 (26 Statutes 451).

(c) P.H.A., 1875, s. 51 ; 13 Statutes 647.

Waterworks Clauses Act, 1847.—Any water company or local authority authorised to supply water by a special Act with which sects. 38 to 43 of the Waterworks Clauses Act, 1847 (*d*), are incorporated, must comply with these provisions, but these sections are not incorporated with the P.H.A., 1875, by sect. 57 of that Act (*e*), so as to govern a local authority who supply water under the Act of 1875.

By sect. 38 of the Act of 1847, water undertakers must at the request of "the town commissioners" (*f*), fix proper fireplugs in the main and other pipes belonging to them at such distances as are prescribed by the special Act, or, if no distance is so prescribed, not more than 100 yards from each other, and at such places as may be most proper and convenient for the supply of water for extinguishing any fire which may break out within the limits of the special Act. If a difference of opinion arises as to the proper position of the fireplugs, such difference is to be settled by the inspector (*g*) or, if there be no inspector, by two justices. The liability of the undertakers is, however, limited, and they are not required to lay water pipes of a sufficient size to enable fireplugs, effective for extinguishing fires, to be fixed, even though in the opinion of the justices appointed to settle the position of fireplugs it is essential that fireplugs should be provided (*h*). [265]

Fireplugs which are affixed at the request of a local authority and in accordance with the provisions of the Act of 1847 must be renewed and maintained by the water undertakers, who must deposit keys for them at each place within the area where any public fire engine is kept and in such other place as may be appointed by the Town Commissioners (*i*). The cost of the fireplugs and the expense of fixing, placing and maintaining them in repair and of providing the keys, is to be defrayed by the local authority (*k*).

The liability of the undertakers to affix, renew and maintain fireplugs, and the liability of the local authority to pay the cost thereof only arises when a request is duly made to them under the provisions of the Waterworks Clauses Act, 1847, or when an agreement is made under the powers of the P.H.A., 1875. Before the passing of the L.G.A., 1933, it was held that a request or agreement must be under seal (*l*), but by virtue of sects. 85, 266 of that Act (*m*) a request or an agreement may be made by the local authority or by a committee thereof to whom the power has been duly delegated. The agreement must conform to any relevant standing orders made by the authority.

(*d*) 20 Statutes 200, 201. The persons so authorised are in the Act styled "the undertakers" (*a*, 2).

(*e*) 13 Statutes 649.

(*f*) "The Town Commissioners" means the party defined under that title in the special Act and, where no parties are there defined, means the persons having control or management of the streets under any Act for paving or improving the town or district to be supplied with water under the special Act (*s*, 3).

(*g*) The "inspector" means an officer appointed under any local Act relating to the town or district supplied with water under the special Act for the purpose of inspecting or superintending works connected with the paving, drainage, or supply of water of such town or district, or an officer appointed under any general Act for executing the like duties with respect to such town or district together with other towns or districts (*s*, 3).

(*h*) *R. v. Wells Water Co., Ltd.* (1886), 55 L. T. 188; 43 Digest 1083, 171.

(*i*) Act of 1847, s. 39; 20 Statutes 200.

(*k*) *Ibid.*, s. 40.

(*l*) This appears to be the effect of the judgments in *Grand Junction Waterworks Co. v. Brentford Local Board*, [1894] 2 Q. B. 735; 43 Digest 1058, 9.

(*m*) 26 Statutes 352, 447. See also *Laxford v. Billericay R.D.C.*, [1903] 1 K. B. 772, C. A.; 13 Digest 394, 1193.

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The local authority must paint or mark on buildings and walls in the streets marks near to each fireplug to denote its situation (n), and it is also the duty of waterworks undertakers to put up such a notice where fireplugs are provided under the Act of 1847 (o).

Both the local authorities and the undertakers are authorised to affix any such marks, notwithstanding objections by owners or occupiers of buildings. Where a notice affixed by a local authority indicated incorrectly the position of a fireplug, and, this being covered with a layer of earth, led to considerable delay in finding it, the jury found that the local authority were guilty of negligence in erecting a misleading plate, and it was held that they were liable in damages as for an act of misfeasance (p). A local authority who are careless in setting up these notices, or in keeping them legible, may therefore find themselves under a liability to make good damage by fire. [266]

In addition to the rights of local authorities with regard to the fixing and maintaining of fireplugs, the owner or occupier of any works or manufactory in a street where the waterworks undertakers have a pipe, may request the undertakers to affix and maintain a fireplug to be used only for extinguishing fires, as near as conveniently may be to such work or manufactory, and the undertakers, on such request, must comply with it, the cost of fixing and maintaining the fireplug being borne by the person making the request (q).

The water undertakers must keep the pipes charged with water at such a pressure as will make the water reach the top storey of the highest house within the limits of their Act, unless it is otherwise provided in their Act (r), or unless this is prevented by frost, unusual drought or other unavoidable cause or accident, or during necessary repairs, and all persons are entitled to take water at the fireplugs for extinguishing fire, without making compensation (s). A failure to comply with this provision does not give a right of action to any person suffering damage by reason of such failure, the only remedy being the enforcement of the penalties provided by the Act, and this notwithstanding that the penalty may not be recoverable by the person aggrieved (t). If the undertakers neglect or refuse to fix, maintain or repair fireplugs, or to keep their pipes charged under the appropriate pressure, they are liable to a penalty of £10 and shall also forfeit to the Town Commissioners and to every person having paid or tendered the rate of 40s. for every day during which such refusal or neglect shall continue after notice in writing shall have been given to the undertakers of the want of supply (u).

Where water could not be supplied from a fireplug for the extinguishing of a fire for the reason that the water was being used at another fire in neighbouring premises, it was held that this was a good plea (x).

Where a magistrate found that the cause of a refusal to supply water was either drought or unavoidable cause, it was held that the

(n) P.H.A., 1875, s. 66; 13 Statutes 658.

(o) Waterworks Clauses Act, 1847, s. 39; 20 Statutes 200.

(p) *Dawson & Co. v. Bingley U.D.C.*, [1911] 2 K. B. 149; 43 Digest 1059, 10.

(q) Act of 1847, s. 41; 20 Statutes 200.

(r) *Ibid.*, s. 35.

(s) *Ibid.*, s. 42; 20 Statutes 201. See also *Weardale and Conselt Water Co. v. Chester-le-Street Co-operative Society*, [1904] 2 K. B. 240; 43 Digest 1083, 175.

(t) *Ibid.*, s. 43; *Atkinson v. Newcastle and Gateshead Waterworks Co.* (1877) 2 Ex. D. 441, C. A.; 33 Digest 23, 99.

(u) *Ibid.*, s. 43.

(x) *Campbell v. East London Waterworks* (1872), 26 L. T. 475; 43 Digest 1083, 174.

undertakers came within the words of the exemptions in sects. 42 and 43, and there was a good defence (a).

Notwithstanding the effect of the decision in *Atkinson v. Newcastle and Gateshead Waterworks Co.* (b), an action may be maintained against the undertakers if it can be shown that their neglect or refusal constitutes something more than a mere breach of duty, as, for example, if a nuisance is caused (c). [267]

The respective liabilities of water undertakers and local authorities with regard to damage caused by disrepair of fireplugs and of the adjacent street, in cases not coming within the penalty clause of the Waterworks Clauses Act, are numerous. Where water escaped from a main during a severe frost and, being prevented from rising to the surface by reason of the fact that the surface was frost-bound, forced its way into a cellar and did damage, it was held that the company were not liable as the accident arose from a frost of extraordinary severity and that there was no negligence (d); though where under similar circumstances it was shown that plugs were known to start occasionally under such circumstances and that the lateral escape of water might have been prevented at a moderate expense, it was held that there was evidence to go to the jury of negligence on the part of the undertakers (e).

It is the duty of the water undertakers to take all reasonable steps to inform themselves of any leakage and to take reasonable precautions against known danger of this nature. They are not entitled to rely on precarious and uncoordinated methods of receiving information as to leaks (f).

As it is the duty of the waterworks undertakers and not of the local authority to keep fireplugs in repair, damage caused by defect in a fireplug is a liability not of the local authority but of the undertakers (g); but where a fireplug is in proper repair and injury is caused by reason of the wearing of the highway around the block, the undertakers are not liable (h).

Where injury was caused to a child by the bursting of a fireplug attached to a main, it was decided that on the facts the injury did not arise from neglect to maintain or repair, and that sect. 43 of the Act of 1847 imposing penalties did not apply. It was further held that even if an injury had been caused by neglect to maintain or repair within the meaning of sect. 43, that section did not exonerate undertakers from their common law obligation of exercising statutory powers without negligence (i).

(a) *Industrial Dwellings Co. v. East London Waterworks Co.* (1894), 58 J. P. 480; 43 Digest 1078, 133.

(b) (1877), 2 Ex. D. 441, C. A.; 33 Digest 23, 39.

(c) *Goodson v. Sunbury Gas Consumers Co.* (1896), 75 L. T. 251; 25 Digest 438, 77; *Metropolitan Water Board v. Cotton Seed Oil Co., Ltd.*, Journal of Gas Lighting, December 21, 1907.

(d) *Blyth v. Birmingham Waterworks Co.* (1856), 11 Exch. 781; 43 Digest 1098, 275.

(e) *Steggles v. New River Co.* (1863), 1 New Rep. 236; (1865), 13 W. R. 413 Exch.; 43 Digest 1098, 276.

(f) *Markland v. Manchester Corpn.*, [1934] 1 K. B. 566; Digest (Supp.)

(g) *Bayley v. Wolverhampton Waterworks Co.* (1860), 6 H. & N. 241; 43 Digest 1098, 277.

(h) *Moore v. Lambeth Waterworks Co.* (1886), 17 Q. B. D. 462, C. A.; 43 Digest 1098, 279.

(i) *Hancock v. Southwark and Vauxhall Waterworks Co.*, [1889] W. N. 108; 43 Digest 1098, 274.

Although a local authority are not liable for accidents caused by the mere non-repair of a highway, they may be liable as waterworks undertakers in respect of damage occasioned by neglect to maintain and repair fireplugs in proper condition in the highway, but if a local authority are both highway authority and water undertakers, they are not liable for accidents caused by the wearing of the road and for allowing the edge of a fireplug to project dangerously above the surface, provided that the fireplug itself is not out of repair or improperly constructed (*k*). [268]

London.—Sects. 38 to 43 of the Waterworks Clauses Act, 1847 (*l*), were usually incorporated with the Acts of the metropolitan water companies, but by sect. 32 of the Metropolitan Fire Brigade Act, 1865 (*m*), all the powers of any local body or officer within the metropolis as respects fireplugs were transferred to the Metropolitan Board of Works. The section made provision for the establishment by the water companies, at the expense of the Board, of such fireplugs as the Board might require. Sect. 34 of the Metropolis Water Act, 1871 (*n*), provided that where a water company gave a constant supply in any part of its area, they might discharge their obligations under sect. 32 of the Act of 1865 by giving two months' notice to the Metropolitan Board of Works and, if the Board had not, at the expiration of the notice, specified what plugs for supply of water in case of fire, at what places, dimensions and form they required, the water company might provide, at the Board's expense, such plugs as to the company might seem necessary. In this provision and in sect. 32 of the Act of 1865, the term "fireplug" and the term "plug" include a hydrant and other apparatus necessary or proper for the supply of water in case of fire.

By sect. 40 of the L.G.A., 1888 (*o*), the Board's powers were transferred to the L.C.C.

Sect. 4 of the L.C.C. (General Powers) Act, 1894 (*p*), permits the county council to make agreements with the water companies and the metropolitan borough councils as to the use of fire hydrants for flushing and other purposes, provided that the company owning the main should be a party to the agreement. In *L.C.C. v. East London Waterworks Co.* (*q*) it was decided that a water company may in the absence of an agreement use hydrants for purposes other than for extinguishing fires.

By the Metropolis Water Act, 1902 (*r*), the Metropolitan Water Board was established for the purpose of acquiring and managing and carrying on the undertakings of the metropolitan water companies. Sect. 66 of the Metropolitan Water Board (Various Powers) Act, 1921 (*s*), provides that the reasonable cost incurred by the Board in reinstating streets and paving damaged by leakage from fire hydrants, etc., and any compensation for damage to property caused by such leakage, payable by the Board or the county council, shall be paid by the Board and the council in any such proportions as they may agree. [269]

(*k*) *Thompson v. Brighton Corpn.*; *Oliver v. Horsham Local Board*, [1894] 1 Q. B. 332, C. A.; 26 Digest 400, 1253. See, further, as to liability of local authorities, the title HIGHWAY NUISANCES.

(*l*) See *ante*, p. 129.

(*n*) 20 Statutes 236.

(*p*) 11 Statutes 1119.

(*r*) 20 Statutes 254.

(*m*) 11 Statutes 1003.

(*o*) 10 Statutes 718.

(*q*) [1900] 1 Q. B. 380; Digest (Supp.).

(*s*) 11 & 12 Geo. 5, c. cxv.

HYDRAULIC POWER

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London, Liverpool, Hull and Manchester are the only places in England and Wales in which there are mains in the streets for supplying hydraulic power for working lifts, cranes, presses, pumps and other machinery, and Manchester Corporation are the only local authority possessing parliamentary powers to give a supply of hydraulic power. [270]

Hull.—The Hull Hydraulic Power Co. was the first company outside London to supply hydraulic power to the public. Their powers are based on the Hull Hydraulic Power Company's Act, 1872 (*a*). The company's area of supply is defined and they may acquire by agreement land for the purpose of their undertaking. The company may break up streets in their defined area after giving due notice to the Hull Corporation. The Company may take water from the old harbour for which the Corporation are to be paid, and these payments by the company to the Corporation are a first charge on the net receipts. Water must not be supplied for any other purpose than motive power without consent of the Corporation. Provision is made for the protection of the sewers, etc., in public streets. The company may erect and let on hire cranes and other machines. There is a saving in sect. 48 for the Dock Company, now the London and North Eastern Railway Co. [271]

Liverpool.—The Liverpool Hydraulic Power Co. was incorporated by statute in 1884 (*b*), and allowed to use water taken from the River Mersey for motive power only and within a defined area. The Liverpool Corporation are bound to break up certain streets, at the request of the company, for the purpose of allowing the company to lay or repair mains, but the corporation may alter mains at the expense of the company. The works of the company are rateable in the same manner as waterworks. An Act of 1887 (*c*) increased the company's area and allowed them to extend their pipes within the borough of Bootle. Under a further Act in 1890 (*d*) the company take all their water from the Corporation and pay for it by agreement, and the Corporation may now refuse on reasonable grounds to break up certain streets. [272]

(a) 35 & 36 Vict. c. xviii.

(c) 50 & 51 Vict. c. xxxv.

(b) 47 & 48 Vict. c. cxxi.

(d) 53 & 54 Vict. c. lxiv.

Manchester.—Manchester is the only place in England and Wales in which parliamentary powers to afford a supply of hydraulic power have been granted to the local authority. Manchester began to supply hydraulic power in 1894 under sect. 13 of the Manchester Corporation Act, 1891 (*e*), which extended the power conferred by sect. 96 of the Manchester Corporation Waterworks Act, 1847 (*f*), to supply any person with water for other than domestic purposes at such rent and upon such terms and conditions as might be agreed upon, to the supply by the Corporation within the city by agreement, of water under pressure for the purpose of supplying motive power by hydraulic pressure for any purposes to which such power is applicable. This power was extended by sect. 27 of the Manchester Corporation Act, 1934 (*g*), to enable the corporation to give a supply of water for hydraulic pressure outside the city, with the consent of the council of any borough or district within the water limits, or in respect of which a supply of water in bulk is for the time being afforded by the Corporation.

The object of the Manchester Corporation in obtaining these powers was to supply hydraulic power for public use from street mains on the high-pressure system at various railway stations, docks and goods depots and also in many wharves, warehouses, and works, for lifting, pressing, stamping, or working motors, etc., by means of which every consumer has on his premises a supply of power of the most convenient and economical description available for immediate use at all times. [273]

London.—The Wharves and Warehouses Steam Power and Hydraulic Pressure Co. was incorporated by statute in 1871 (*h*) and empowered to take not more than one million gallons of water a day from the River Thames on payment of certain charges to the Thames Conservators. The water was to be used for motive power only. The Act incorporated with it the provisions of the Waterworks Clauses Act, 1847, as to the breaking up of streets (*i*), but no power to purchase land compulsorily was given. The original district of the company extended over a narrow strip on each side of the river from Blackfriars Bridge to the Tower of London. The London Hydraulic Power Act, 1884 (*k*), changed the name of the company to the London Hydraulic Power Co. and extended their district to an area between Vauxhall Bridge and the West India Docks. Powers were granted to lay pipes in the district under the superintendence of the Metropolitan Board of Works (*l*). Under their Act of 1893 (*m*), the company must provide the L.C.C. with plans of their system if so requested. In 1908 (*n*), effect was given to an agreement with the Thames Conservators to take more than one million gallons of water a day from the river or docks on payment of certain charges to the Conservators, and now, as regards the docks, to the Port of London Authority. An agreement with the metropolitan borough councils concerned is necessary to allow the company to carry on operations outside their statutory area.

Sect. 21 of the Metropolitan Water Board (Charges) Act, 1907 (*o*), authorises the Water Board by agreement to supply water under

(*e*) 54 & 55 Vict. c. ccvii.
 (*g*) 24 & 25 Geo. 5, c. xcvi.
 (*i*) 20 Statutes 196—198.
 (*l*) Now of the L.C.C.
 (*n*) 8 Edw. 7, c. xvii.

(*f*) 10 & 11 Vict. c. cciii.
 (*h*) 34 & 35 Vict. c. cxxi.
 (*k*) 47 & 48 Vict. c. lxxii.
 (*m*) 56 & 57 Vict. c. lx.
 (*o*) 20 Statutes 285.

pressure for hydraulic power. Sect. 14 of the Metropolitan Water Board (Charges) Act, 1921 (*p*), limits such a supply to 500,000 gallons a day to any one consumer, except in cases where before March 31, 1921, the consumer received a greater supply. The section saves the rights of the London Hydraulic Power Company. [274]

(*p*) 20 Statutes 299.

ICE-CREAM

PRODUCTION AND SALE	—	PAGE	—	LONDON	—	PAGE
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Production and Sale.—The production and sale of ice-cream are not specifically controlled by any public general statute, although it would presumably be held that ice-cream is "food" within the definition in sect. 72 (7) of P.H.A., 1925 (*a*), and that the precautions enjoined in that section should be observed as respects any room in which ice-cream is prepared for sale, sold or stored. In many boroughs and urban districts, however, the manufacture and sale of ice-cream are regulated by local Act (*b*). These Acts usually require manufacturers and dealers to register themselves and their premises with the local sanitary authority, who have power to refuse the registration of unsuitable premises or to cancel a registration for sufficient cause, in either instance subject to a right of appeal to a court of summary jurisdiction. In some instances these powers are supplemented by a further clause (*c*), giving the M.O.H. and sanitary inspector a right to inspect premises, materials and utensils, and to take appropriate action when notified of infectious disease among persons employed at, or residing in, premises used for the manufacture of ice-cream. This clause also requires dealers to have their names and addresses inscribed on any cart, barrow or stand.

No statutory requirement deals with the composition of ice-cream, and there is no general agreement as to the proportion of dairy cream, if any, which an article sold as ice-cream should contain. The laws applying specially to milk and cream do not apply to ice-cream. [275]

London.—Sect. 42 of the L.C.C. (General Powers) Act, 1902 (*d*), imposes a penalty of 40s. where a manufacturer or dealer in ice-cream or other similar commodity (*i*) causes or permits the manufacture, sale or storage in any cellar, shed or room where there is an inlet or

(*a*) 13 Statutes 1149.

(*b*) See *e.g.* ss. 34, 35 of the Newport Corp'n. (General Powers) Act, 1934 (24 & 25 Geo. 5, c. lx.), and ss. 112, 114 of the Weston-super-Mare U.D.C. Act, 1934 (24 & 25 Geo. 5, c. xciv.).

(*c*) See *e.g.* s. 114 of the Weston Act mentioned in note (*b*).

(*d*) 11 Statutes 1247.

opening to a drain, or which is used as a living or sleeping room ; (ii) does anything likely to expose the commodity to infection or contamination, or omits to take any proper precaution for the due protection of the commodity ; (iii) omits to give notice to the borough M.O.H. of any outbreak of infectious disease among his employees or any persons living or working on the premises. Sect. 43 requires itinerant vendors to exhibit the name and address of the manufacturer. Under sect. 44 proceedings are to be taken by the sanitary authority, or in default may be instituted by the L.C.C. By sect. 48 of the L.C.C. (General Powers) Act, 1904 (*e*), fines under the above-mentioned provisions are to be paid to the sanitary authority taking proceedings. Sect. 5 of the L.C.C. (General Powers) Act, 1932 (*f*), provides for registration of premises used for the sale or manufacture of ice-cream. Exceptions are made for (i) hotels, restaurants and clubs, and (ii) theatres, music halls and cinemas (including the Royal Albert Hall) where sale only and not manufacture takes place. Power to refuse or cancel registration is given subject to an appeal to a court of summary jurisdiction within 14 days of the decision. [276]

(*e*) 11 Statutes 1260.

(*f*) 25 Statutes 306.

ICE RINKS

See SKATING.

IDIOTS

See MENTAL DEFECTIVES.

ILLEGAL PRACTICES

See CORRUPT AND ILLEGAL PRACTICES.

IMBECILES

See MENTAL DEFECTIVES.

IMPORTED FOOD

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See also titles :

ADULTERATION OF FOOD ;
 BUTTER, MARGARINE AND CHEESE ;
 CONDENSED MILK ;
 CREAM ;
 DRUGS ;
 FOOD AND DRUGS ;

FOOD AND DRUGS AUTHORITIES ;
 INSPECTORS OF FOOD AND DRUGS ;
 MEAT ;
 MILK AND DAIRIES ;
 PRESERVATIVES.

The importation of food is governed by regulations made under various Acts, the P.H. (Regulations as to Food) Act, 1907 (*a*), the Food and Drugs (Adulteration) Act, 1928 (*b*), the Merchandise Marks Act, 1926 (*c*), and the Diseases of Animals Act, 1894 (*d*). The supervision of actual importation is primarily a matter for the Commissioners of Customs and Excise, but sanitary authorities also have certain powers and responsibilities which will be indicated later. Food and drugs authorities (*e*) are empowered by sect. 9 of the Merchandise Marks Act, 1926, to enforce the provisions of that Act which require some kinds of imported food to be marked or labelled with indications of origin on sale or exposure for sale.

PUBLIC HEALTH PROVISIONS

Food or Drink Injurious to Health.—The Minister of Health has a general power under the Act of 1907 above-mentioned to make regulations for the prevention of danger to public health arising from the importation of articles of food or drink (except drugs (*f*) or water) intended for sale for human consumption ; and the regulations may

(*a*) 8 Statutes 862.(*c*) 19 Statutes 898.(*f*) See title FOOD AND DRUGS AUTHORITIES, Vol. VI., p. 128.(*e*) As to drugs, see title DRUGS.(*b*) *Ibid.*, 884.(*d*) 1 Statutes 389.

provide for the examination and taking of samples. The regulations dealing generally with imported food, and particularly with meat, are contained in the Public Health (Imported Food) Regulations, 1925 (g), and amending regulations of 1933 (h). Imported milk is dealt with by the Public Health (Imported Milk) Regulations, 1926 (i); condensed and dried milk by further special regulations (k); and there are also special provisions relating to imported food in the Public Health (Preservatives, etc., in Food) Regulations (l). These regulations, with the exception of those of 1933, are printed in Vol. III. of Lumley's Public Health, 10th ed., under the head of "Food and Drugs" or "Milk and Dairies." [277]

Food Unfit for Consumption.—It is unlawful to import into England or Wales, for sale for human consumption, any article of food which has been examined by a competent authority and not found to be fit for human consumption, or food in the manufacture or preparation of which any such article has been used (m). [278]

Examination of Imported Food.—Under Art. 7 of the regulations, the M.O.H. (or other medical practitioner appointed for the purpose) of a sanitary authority (n) may examine any article of food which has been landed within his district or which is on a ship or air-vessel or overside and is about to be landed. He is entitled to access to vessels and premises and to have all reasonable facilities to make his examination of the food. If access be refused he may apply to a justice for a warrant authorising entry. The consent of an officer of Customs and Excise is required before the food is examined, if the duties of the Customs officer with respect to examination have not been completed. An officer of Customs, and the M.O.H. are entitled to require reasonable assistance and to demand information needed for the discharge of their duties (Art. 19). [279]

Samples. Seizure of Unsound Food.—Under Art. 8 of the regulations, the M.O.H. may take a sample of imported food, and, if he deems special procedure to be necessary, may give written notice to the importer forbidding the removal of food, except to a place specified in the notice, for a period which, except with the importer's consent, may not exceed forty-eight hours. "Importer" includes any person who, whether as owner, consignee or consignee, agent or broker, is in possession of or is in any way entitled to the custody or control of the food. The M.O.H. may seize any food which he finds to be diseased, or unwholesome, and may apply to a justice for a condemnation order (Art. 9). The Minister of Health has power to determine differences referred to him by all the parties affected (Art. 16). [280]

Meat.—It is unlawful to import into England or Wales for sale for human consumption any conditionally admissible meat without an

(g) S.R. & O., 1925, No. 273.

(h) S.R. & O., 1933, No. 347.

(i) S.R. & O., 1926, No. 820.

(k) S.R. & O., 1925, No. 509; 1927, No. 1092; Dried Milk, 1923, No. 1823; 1927, No. 1093; see title CONDENSED MILK, Vol. III., p. 408.

(l) S.R. & O., 1925, No. 775; 1926, No. 1557; and 1927, No. 577.

(m) Public Health (Imported Food) Regulations, 1925 (S.R. & O., No. 273), Art. 6.

(n) *I.e.* a port sanitary authority or a borough or district council whose area includes or abuts on any part of a Customs port which part is not in the jurisdiction of a port sanitary authority.

official certificate, or any prohibited meat (*o*). "Meat" means the flesh or any other edible part of an animal including a bull, cow, ox, heifer, calf, ram, ewe, wether, lamb, goat, kid, boar, sow or hog, and includes any substance, compound material or article of which the meat of such an animal is an ingredient (*p*). The various kinds of "conditionally admissible" and "prohibited" meat are defined at length in the schedules to the regulations of 1933.

The M.O.H. of a sanitary authority has, with regard to imported meat, the powers which he possesses in connection with imported food generally, and also special duties and powers with respect thereto. He may be required, by notice from an officer of Customs and Excise, under Art. 11 of the regulations of 1925, to examine any oversea meat, and may give a certificate authorising its removal or, by notice in writing, forbid its removal for any purpose other than exportation. In either case, he must give a copy of his certificate or notice to the Customs officer. If the meat is found to have been imported contrary to the regulations or to be unfit for human consumption, the sanitary authority must within twelve hours give notice to the importer. A justice's order for destruction is required only if the importer gives notice of his intention to prove that the meat is not intended for sale for human consumption (Art. 12 (2)). [281]

Wrapping of Imported Meat.—It is unlawful (*q*) to land from a prohibited country (*r*) any meat or offals which are packed or wrapped in cloths, bags, sacking or similar material not wholly made of certain specified materials of a prescribed pattern. The specified particulars are: jute, hemp, flax or other cloth with three red threads woven together at intervals of twelve inches in the warp. Meat wrappers, and the cloth wrappers authorised for meat, may not be used for the landing, packing, conveyance or sale of fertilisers, feeding stuffs or horticultural produce; nor for any material intended for use as bedding for animals. But wrappings of stockinette or of paper are permissible. Inspectors of the M. of A., and of the local authority under the Diseases of Animals Acts, have power to enter premises, vessels, aircraft, etc., for the enforcement of the regulations. [282]

Milk.—Regulations of the M. of H. require all imported milk, including skimmed milk, to be in such a condition that, on a sample being taken, the milk shall be found free from tubercle bacilli and shall not contain more than 100,000 bacteria per cubic centimetre (*s*). The regulations are to be enforced by port sanitary authorities and other local sanitary authorities, with whom importers must be registered. The local authority may remove from the register a consignee of unsatisfactory imported milk, subject to an appeal to a court of summary jurisdiction within twenty-one days, whence either party may appeal to quarter sessions. [283]

(*o*) Public Health (Imported Food) Regulations, 1925, Art. 10, as amended by S.R. & O., 1933, No. 347.

(*p*) See the amending regulations of 1933.

(*q*) Importation of Meat, etc. (Wrapping Materials) Order, 1932 (S.R. & O., No. 317), made under the Diseases of Animals Act, 1894.

(*r*) "Prohibited Countries" are all countries which are not part of the British Empire, except the United States of America, Iceland and the Faroe Islands.

(*s*) Public Health (Imported Milk) Regulations, 1926 (S.R. & O., No. 820), Art. 5.

Condensed and Dried Milk.—The Customs and Excise Department control the importation of condensed milk (*t*). If a local authority learn that imported condensed or dried milk is deposited in their area with a view to sale contrary to the regulations, they must communicate the facts to the Minister of Health (*u*). [284]

Preserved and Coloured Food.—Imported food may not contain any preservative or added colouring matter forbidden by the regulations applicable to those matters (*a*). The Customs and Excise are primarily the authority for enforcement, but officers of port and other sanitary authorities also have certain powers. When an offence is discovered, the facts must be communicated to the Minister of Health by the local authority. [285]

Cream.—No cream which contains any thickening substance, as defined in the regulations, may be imported into England or Wales with a view to sale (*b*). [286]

Penalties.—The penalty for wilfully neglecting or refusing to obey or carry out, or obstructing the execution of any of the regulations already mentioned made under the P.H.As. is a fine not exceeding £100, and a further penalty not exceeding £50 for every day during which the offence continues (*c*). [287]

Butter, Margarine, etc.—Sect. 12 of the Food and Drugs (Adulteration) Act, 1928 (*d*)—enforceable by the Customs and Excise—forbids absolutely the importation into the United Kingdom of butter or margarine containing more than 16 per cent. of water, margarine containing more than 10 per cent. of milk-fat, milk-blended butter containing more than 24 per cent. of water, and butter, margarine or milk-blended butter containing a prohibited preservative. It is also forbidden to import any of the following articles unless they are in packages or receptacles conspicuously and appropriately labelled in the prescribed manner, viz. margarine, margarine-cheese, condensed separated or skimmed milk, adulterated or impoverished milk or cream, and any adulterated article of food to which a special Order in Council may be applied for the purpose. No such Order, however, has been made. [288]

MERCHANDISE MARKS ACTS

Marks of Origin.—Under sect. 2 of the Merchandise Marks Act, 1926 (*e*), Orders in Council may be made prohibiting the sale, or exposure for sale, of particular classes of imported goods, unless they bear an indication of origin. The following imported articles, on sale or exposure for sale, are required to be marked or labelled with the

(*t*) Public Health (Condensed Milk) Regulations, 1923 (S.R. & O., No. 509), as amended by S.R. & O., 1927, No. 1092.

(*u*) *Ibid.*, and Public Health (Dried Milk) Regulations, 1923 (S.R. & O., No. 1323), as amended by S.R. & O., 1927, No. 1093. See also title CONDENSED MILK.

(*a*) Public Health (Preservatives, etc., in Food) Regulations, 1925 (S.R. & O., No. 775), Art. 11, as amended by S.R. & O., 1926, No. 1557 and 1927, No. 577. See title PRESERVATIVES.

(*b*) *Ibid.*, Art. 11 (2). See title CREAM.

(*c*) P.H.A., 1896, s. 1 (3) (18 Statutes 872), as applied by the P.H. (Regulations as to Food) Act, 1907 (8 Statutes 802).

(*d*) 8 Statutes 891.

(*e*) 19 Statutes 899.

prescribed indication of origin: honey, fresh apples (*f*), currants, sultanas and raisins, hen eggs and duck eggs in shell, dried eggs, oatmeal, rolled oats, oatflour, groats (*g*), raw tomatoes (*h*), malt products (*i*), butter (*k*), frozen and chilled salmon and sea-trout (*l*), bacon and ham (*m*), dead poultry (*n*), maize starch and cornflour (*o*), meat (*p*), and salt (*q*). Substantially, the marking orders, to which reference should be made for details, require these articles (with some exceptions in particular instances) to be marked, either with (1) a definite indication of the country where the goods were manufactured or produced, or (2) the word "foreign" or the word "Empire" as the circumstances may be. The word "imported" is not sufficient. The M. of A. issued an explanatory circular of a general nature on November 10, 1930, and another on December 21, 1934, as to the effect of the order for the marking of imported meat. By sect. 10 (4) of the Act, "sale" includes a wholesale as well as a retail sale, but sales for consignment to a person outside the United Kingdom, sales at hotels or restaurants for consumption on the premises, and sales of foods which have undergone a process of cooking, curing, or preserving in the United Kingdom, are excluded. "Exposure for sale" does not include exposure by a wholesale dealer, unless the order expressly provides to the contrary. There is room for doubt whether indications of origin are required on the exposure for sale of cooked poultry and meat. Bacon and ham which have been cooked, canned or potted prior to importation are exempted from marking. "Imported" means imported from any country outside the United Kingdom, *i.e.* outside Great Britain and Northern Ireland. [289]

Channel Islands and Isle of Man.—Goods (*e.g.* tomatoes) produced in the Channel Islands or Isle of Man may be authorised by an Order in Council under sect. 13 (4) of the Merchandise Marks Act, 1926 (*r*), to be treated as if produced in the United Kingdom. No such Order has been made as to produce of the Channel Islands, but an Order has been made exempting foodstuffs produced in the Isle of Man (*s*). [290]

Enforcement.—By sect. 9 of the Merchandise Marks Act, 1926 (*t*), food and drugs authorities (*u*) are empowered, though not obliged, to enforce

(*f*) Merchandise Marks (Imported Goods) No. 3 Order, 1928; S.R. & O., No. 571.

(*g*) Merchandise Marks (Imported Goods) No. 5 Order, 1928; S.R. & O., No. 1052.

(*h*) Merchandise Marks (Imported Goods) No. 4 Order, 1929; S.R. & O., No. 1180.

(*i*) Merchandise Marks (Imported Goods) No. 6 Order, 1930; S.R. & O., No. 560.

(*k*) Merchandise Marks (Imported Goods) No. 1 Order, 1932; S.R. & O., No. 128.

(*l*) Merchandise Marks (Imported Goods) No. 8 Order, 1931; S.R. & O., No. 554.

(*m*) Merchandise Marks (Imported Goods) No. 3 Order, 1934; S.R. & O., No. 209.

(*n*) Merchandise Marks (Imported Goods) No. 5 Order, 1934; S.R. & O., No. 801.

(*o*) Merchandise Marks (Imported Goods) No. 6 Order, 1934; S.R. & O., No. 693.

(*p*) Merchandise Marks (Imported Goods) No. 7 Order, 1934 (S.R. & O., No. 727); and Merchandise Marks (Imported Goods) Exemption Direction (No. 4), 1935 (S.R. & O., No. 1058). As to imported drugs, see p. 122 of Vol. V.

(*q*) Merchandise Marks (Imported Goods) No. 4 Order, 1935; S.R. & O., No. 682.

(*r*) 19 Statutes 907. (*s*) S.R. & O., 1927, No. 505. (*t*) 19 Statutes 904.

(*u*) Defined by s. 13 of Food and Drugs (Adulteration) Act, 1928; 8 Statutes

898. See Vol. VI., p. 128.

the marking orders, and authorised officers of such authorities (usually, in practice, the officers who act as sampling officers under the Food and Drugs (Adulteration) Act, 1928), have special powers to enter premises and take samples. When taking a sample, the officer must notify the vendor or his agent that the sample is procured in pursuance of the Act of 1926. He must pay for the sample if required to do so, and, if required, must divide the sample into two parts and leave one part with the vendor (a). [291]

Offences.—By sect. 5 of the Act of 1926 (b), it is an offence to sell, expose for sale or distribute by way of advertisement any goods in contravention of that Act, or to contravene or fail to comply with an Order in Council made under it. If any person advertises or offers for sale under a specific designation any imported goods to which a marking order applies, he is deemed to commit an offence if he does not include in the offer or advertisement an indication of the origin of the goods (c). The removal, alteration or obliteration of a mark of origin is also an offence, unless it be proved that this was not done for the purpose of concealing the origin of the goods (d). [292]

Legal Proceedings.—By sect. 5 of the Act of 1926, a contravention of the Act or of a marking order is made an offence against the Merchandise Marks Act, 1887 (e), with which the Act of 1926 is to be construed as one Act (f). But the procedure differs in that offences are not indictable, imprisonment may not be inflicted, and the fine imposed by a court of summary jurisdiction may not exceed £5 for a first offence, or £20 and the forfeiture of the goods for a subsequent offence. This is because a new provision is substituted for sect. 2 (3) of the Act of 1887 by proviso (i) to sect. 5 (1) of the Act of 1926. An appeal to quarter sessions against a conviction lies under sect. 2 (5) of the Act of 1887. [293]

Special Defences.—By sect. 5 (5) of the Act of 1926 (g) it is a good defence if a defendant proves that, having taken all reasonable precautions against an offence, he had no reason to suspect that the goods were goods to which the Act or an order applied, and that on a demand by or on behalf of the prosecutor he gave all the information in his power with regard to the persons from whom he obtained the goods. It is also a defence to prove that he had otherwise acted innocently, but this does not mean that an employer is not liable for the acts of his servants (h). [294]

Exemption of Employer from Conviction.—A master is *prima facie* liable for contraventions committed by his servants, but an employer or principal charged with an offence may lay an information against some other person whom he charges as the actual offender, but must give the prosecution not less than three days' notice of his intention to do so (i). The other person may then be brought before the court at the time appointed for hearing the charge, and if after the commission

(a) Act of 1926, s. 9; 19 Statutes 904.

(c) Act of 1926, s. 5 (2).

(e) 19 Statutes 832.

(f) Act of 1926, s. 13 (1); 19 Statutes 907.

(h) See *Coppen v. Moore* (No. 2), [1898] 2 Q. B. 306 (43 Digest 244, 377); *Allard v. Selfridge & Co., Ltd.*, [1925] 1 K. B. 120 (43 Digest 240, 380).

(i) Act of 1926, s. 6; 19 Statutes 903.

(b) 19 Statutes 902.

(d) *Ibid.*, s. 8.

(g) 19 Statutes 903.

of the offence has been proved, the employer or principal satisfies the court by evidence that he used due diligence (*k*) and that the other person committed the offence in question without his consent, connivance or wilful default, the actual offender is to be convicted, the employer or principal being exempted from penalty without being acquitted (*l*). In any such proceeding, the prosecution may cross-examine the employer or principal or any witness called by him and may call rebutting evidence. [295]

LONDON

The law in London is similar to that generally applicable elsewhere, the local authorities for the purpose being the metropolitan borough councils and the Common Council of the City. The P.H.A., 1896 (*m*), extends to London and it follows that the P.H. (Regulations as to Food) Act, 1907 (*n*), also applies there. [295A]

(*k*) Under the similar provision in s. 12 (5) of the Sale of Food (Weights and Measures) Act, 1926 (20 Statutes 424), it was held that failure of a manager to use due diligence to prevent an offence by a subordinate employee may be failure on the part of the employer—*R. C. Hammett, Ltd. v. L.C.C.* (1933), 97 J. P. 105 (Digest (Supp.)).

(*l*) See *A. Walking, Ltd. v. Robinson* (1930), 99 L. J. (K. B.) 171; Digest (Supp.); another case under the Act of 1926 mentioned in note (*k*).

(*m*) 13 Statutes 871.

(*n*) 8 Statutes 862.

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See BUILDING AND IMPROVEMENT LINES.

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INTRODUCTION

This article is not intended to cover the general law and practice of income tax; its scope is restricted to those provisions of the Income Tax Acts which have special application to local authorities and to

such modifications of general practice as are necessitated by other statutory provisions affecting the tax liability of local authorities, or by the special circumstances affecting them as taxable subjects.

In regard to the Agreed Rules (*post*) the aim has been to explain the principles upon which they are founded rather than to attempt an exhaustive treatment of the textual detail. [296]

Liability of Local Authorities.—A local authority is a body corporate and by rule 1 of the general rules applicable to all schedules (a), every body of persons is chargeable to tax in like manner as a person is chargeable. A local authority is not, however, entitled to the personal reliefs afforded to individuals under the tax law.

Local rates are not taxable income but interest on loans paid by a local authority out of rates is subject on payment to deduction of income tax at the source, and the proper officer having the management of the accounts may be charged with the tax payable thereon, he being indemnified in respect of the deduction of tax in like manner as if the rates were chargeable with tax (aa).

A local authority is therefore :

- (1) Chargeable with tax under the various schedules of the Income Tax Acts in the same manner as a person ; and
- (2) Accountable for tax deducted from interest on loans paid, to the extent that such interest is not payable, or not wholly payable, out of profits or gains on which it has been charged to tax (b).

In both these respects the liability of local authorities to income tax has been affected by the provisions of Acts of Parliament which are not taxing statutes. (See "Local Authorities as Dual Tax Entities" and "Set-off," *post*.) It is this fact which makes the adjustment of the liability of local authorities to income tax a difficult and complex matter. It has been suggested that the time and trouble involved in determining the ultimate liability of local authorities to income tax is not justified by results, and that a local authority should not, therefore, be chargeable with tax but merely account to the revenue for tax deducted by it on payment of interest on its loans and other annual payments taxed at the source. It is clear, however, that the suggestion would involve a loss of revenue to the Crown and is not likely to be adopted for that reason. [296A]

Agreed Rules.—Much has been done to simplify and, what is equally important, to establish a uniform practice in the determination of the liability of local authorities to income tax by the agreement of a body of rules for the purpose, between the Board of Inland Revenue and the Institute of Municipal Treasurers and Accountants. These rules have not the force of law and must be clearly distinguished from the statutory rules under the Income Tax Acts, but they provide a body of practice in conformity with the law as it stands on an accepted interpretation. The rules were first agreed following, and giving effect to, the decision

(a) 9 Statutes 588.

(aa) Rule 6 of the Miscellaneous Rules applicable to Schedule D, Income Tax Act, 1918 (9 Statutes 580).

(b) Rule 21 of the General Rules applicable to all schedules, Income Tax Act, 1918 (9 Statutes 593).

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in *Sugden v. Leeds Corporation* (c), and have since been revised. They do not apply to local authorities who have obtained a local Act modifying the general law.

Copies of the Agreed Rules may be had at the offices of the Institute, No. 1, Buckingham Street, S.W.1, and should be available to every financial officer having the responsibility of adjusting the tax liability of a local authority. [297]

Local Authorities as Dual Tax Entities.—Notwithstanding that a "body of persons" is to be chargeable to income tax in like manner as a person is chargeable, a local authority has always been regarded as constituting more than one taxable subject. This is the effect of the statutory regulation of the finance and accounts of local authorities and affords an illustration of the statement already made, that the liability of a local authority to income tax may be affected by other than taxing statutes. Thus when the council of a borough was made the urban sanitary authority for the borough by the P.H.A., 1875, the setting-up and regulation of the general district rate fund and the provision for the levy of a separate district rate created a trust fund so separate in law from the existing borough fund as to constitute a separate and distinct taxable subject.

In the same way the Acts by which local authorities were empowered to carry on trading undertakings so strictly regulated the appropriation of the revenue to be derived from the authorised statutory charges for the services, that each undertaking might also be regarded as a subject for separate assessment of its profits to income tax under Sched. D. [298]

In a similar manner, but in the reverse direction, the passing of the R. & V.A., 1925, affected the liability of local authorities to income tax by the consolidation of the borough and general district funds into one general rate fund. More recently the L.G.A., 1933, has had a similar effect (see p. 161, *post*). The restriction of electricity profits that might be taken in relief of rates by the Electricity (Supply) Act, 1926, and the regulation of Housing (Assisted Scheme) accounts under the Housing Act of 1919, are other instances where the financial provisions of an Act of Parliament, not being a taxing statute, have affected the liability of local authorities to income tax.

This aspect of the question is perhaps more intimately concerned with the *accountability* of local authorities for tax deducted from interest on loans than with their chargeability with tax under the various charging schedules, and it will be necessary to examine the position more fully under that heading, but the principle involved does affect chargeability to some extent (especially under Sched. D), and it is so important that it is necessary at the very outset to emphasise the position in relation to the taxing rule, that a body of persons is to be chargeable to tax in like manner as a person is chargeable.

The Agreed Rules express an approved interpretation of the law upon this question of separate tax entities as follows:

- (1) For the purposes of income tax, the separate rate funds of a local authority are separate and distinct entities, and the authority is to be assessed in respect of each of them as a separate person.
- (2) The number of rate funds to be dealt with separately is determined by the number of separate rates levied or leviable.

(c) [1914] A. C. 488; 28 Digest 74, 397.

(Where the services provided by a local authority are limited to a part only of its area, the authority is required to charge the cost of such services to the ratepayers of the area so served. Thus, in the case of an R.D.C., the expenses of sewerage and water supply are generally met by a separate special expenses rate on each parish (or contributory place) receiving these services. Such special expenses fund is for each separate parish (or place) a separate rate fund for income tax purposes.) (d)

Loans funds, sinking funds, redemption funds and reserve funds are not separate rate funds for income tax purposes.

- (3) One rate fund can trade with another, and has power to borrow from and to lend to another at interest.

Payments or transfers (including charges for interest) legally made from one rate fund to another (but not within the same rate fund) are to be treated as real transactions and not as mere book entries (e). [299]

Chargeability with Income Tax.—Income tax is one tax although for purposes of convenience of collection it is assessed under a number of different schedules (f). There are five schedules under which income tax is collected as follows:

Schedule A is chargeable in respect of rents and other profits which arise from the ownership of lands, tenements, hereditaments and heritages in the United Kingdom.

Schedule B.—Under this schedule are charged the profits arising from the occupation of land.

Schedule C includes profits arising from interest, annuities and dividends and shares of annuities payable out of any public revenue whether British, colonial or foreign.

Schedule D is an all-embracing schedule as will be seen from the six cases into which it is divided.

Case I.—Profits of any trade, manufacture, adventure or concern in the nature of trading.

Case II.—Profits in respect of professions or vocations.

Case III.—Profits of uncertain value (including interest not being annual interest).

Case IV.—Profits in respect of interest arising from foreign and colonial securities (except those charged under Schedule C).

Case V.—Profits arising from foreign or colonial possessions.

Case VI.—Profits not falling under any other schedule or under previous cases in this schedule.

Schedule E.—Taxes, salaries, fees, wages, perquisites or profits which accrue by reason of office held.

Of these, it will be seen that Schedule C will not normally have any application to local authorities, the duty being assessed by the special commissioners on the persons and bodies entrusted with the payment of the income concerned, and Schedule E is essentially applicable to "persons" and not bodies of persons. In consequence there are no Agreed Rules relating to local authorities in reference to either Schedule

(d) Certain provisions of the L.G.A., 1933, relating to "general" and "special" expenses (and particularly ss. 181 and 191) might be found to have affected the liability indicated in this part of the rule. The question of amendment of the Rules is now under discussion.

(e) Agreed Rules 1, 2 and 3, p. 9.

(f) *L.C.C. v. A.-G.*, [1901] A.C. 26; 28 Digest 73, 392.

C or E. The statutory officer of the local authority, the clerk or treasurer, as the case may be, is, however, required to supply the necessary returns to the taxing authorities of salaries and wages paid to employees of the authority, for the purpose of the assessment of the recipients under Schedule E. [300]

SCHEDULE A

The Agreed Rules relating to Schedule A deal with the relief from tax under the schedule in respect of various properties owned by local authorities, which is in the main based upon general exemptions. Thus assize courts and police stations occupied and used solely for Crown purposes are exempted, notwithstanding that the bare legal ownership of the premises is vested in some authority other than the Crown, but a municipal building in which a hall is occasionally used as a court of justice is not within the relief (g). A coroner's court where this is a separate building would probably come within this exemption. [301]

Police Quarters.—No assessments are to be made upon police barracks, section houses, or blocks of married quarters occupied by police officers, or upon houses (chiefly in country areas) occupied by police officers who both reside on the premises and attend to police business there; but assessments are made on the police authority in respect of the full annual value of houses (chiefly in urban areas) provided by the local authority and used solely as private residences of police officers (h). [302]

Education.—Schools provided by local education authorities are not assessed, although the buildings may be occasionally used otherwise than for purposes of education, so long as it can be shown that any sums received from casual lettings are intended merely to cover the cost of lighting, cleaning, etc. (i). In this connection it will be recalled that public elementary schools of a local authority are made available by statute for certain purposes.

Houses occupied rent free by virtue of their office by teachers or school-keepers of schools provided by the local education authority are exempted, if the total income of the teacher or school-keeper, exclusive of the annual value of the house, does not amount to £150 per annum (k). Where the teacher or school-keeper occupies a house by virtue of his office for which he pays a rent less than the full annual value, relief may be allowed in respect of the excess if his total income does not amount to £150 per annum (l).

Houses or other premises belonging to the education authority under the Education Acts which are regarded as "vested in trustees for charitable purposes," so far as the rents received therefrom are applied in support of public elementary or higher education, are also exempted (m). [303]

Public Free Libraries.—These are not assessed where the building is owned and maintained by the local authority under the provisions of the Public Libraries Acts, but the annual value of officers' quarters in such building is to be retained in charge unless the total income of the officer (exclusive of the annual value of the quarters) does not amount

(g) Agreed Rules, 6.

(i) *Ibid.*, 5 (a).

(l) *Ibid.*, 5 (b).

(h) *Ibid.*, 7.

(k) *Ibid.*, 5 (b).

(m) *Ibid.*, 5 (c).

to £150 per annum. Where a building, although used mainly as a free library, is in fact used for purposes other than those of a library or scientific institution, the relief does not apply. Thus the letting of a room in a free library building to a local literary or scientific society will be sufficient to take away the exemption even though the rent charged can be shewn to be nominal and intended merely to cover the cost of heating, lighting and cleaning (n).

In a recent case the Income Tax Commissioners struck out an assessment which had been made under Schedule A in respect of a public library where the authority made a charge to non-residents in the area for use of the library facilities. The charge made was in the nature of a registration fee and presumably the commissioners found as a fact that it was not "a payment demanded or made for any instruction afforded in the building of a literary institution by lectures or otherwise." [304]

Public Parks and Recreation Grounds.—No assessment is made under Schedule A on public parks and recreation grounds held in trust for and used solely by the public (o), or on lodges in public parks occupied rent free by park-keepers or other park servants of the local authority holding and managing the park on behalf of the public. Where the lodges are let at a rental, assessments based on the rents paid are to be made under Schedule A (p). [305]

Sewers.—Sewers vested in a local authority are not assessed. The relief is limited to main sewers and sewers maintained by the local authority having statutory powers to construct and maintain sewers. Other properties, e.g. sewage or purification pumping stations, works, outfall works, sewage farms, etc., which are incidental to the disposal of sewage are not within the relief (q). [306]

Public Conveniences.—No assessments are made on public conveniences, including shelters with lavatory accommodation, etc. (r). [307]

Public Assistance Institutions, including infirmaries, children's homes and schools are exempted. The annual value of an officer's quarters is to be retained in charge unless the occupant's total income, exclusive of the annual value of the quarters, does not amount to £150 per annum (s). [308]

Public Assistance Administrative Offices (within or without the curtilage of an institution) which have previously been relieved from tax under Schedule A or which are acquired out of money raised or loans sanctioned for public assistance purposes are exempted.

The relief applies only so long as the premises are used *solely* for public assistance administration, and does not extend to offices owned under general powers and set apart for public assistance purposes, whether or not a rent is charged (t). [309]

Mental and other Hospitals provided by a local authority are exempted. The annual value of an officer's quarters is to be retained

(n) Agreed Rules, 5 (d).

(p) *Ibid.*, 5 (f).

(r) *Ibid.*, 5 (h).

(t) *Ibid.*, 5 (j).

(o) *Ibid.*, 5 (e).

(q) *Ibid.*, 5 (g).

(s) *Ibid.*, 5 (i).

in charge unless the occupant's total income, exclusive of the annual value of the quarters, does not amount to £150 per annum (*u*). [310]

Offices owned by a Local Education Authority and occupied for educational purposes are exempted, provided that the premises cannot legally be diverted to any other purposes. The relief extends to offices, similarly restricted, which have been taken over from *ad hoc* education authorities or have been acquired out of moneys raised or loans sanctioned for educational purposes. The relief does not extend to offices acquired under general powers and set aside, whether or not at a rental, for educational purposes (*a*). [311]

General.—The annual value of chargeable quarters occupied rent free is to be assessed irrespective of the amount of any interest payable by the local authority and is not to be treated as income for set-off purposes.

Tax is to be retained in charge under Schedule A on any ground rent or other annual payments specifically charged upon the properties concerned, except to the extent that such charges are covered by the annual value of any quarters retained in assessment upon the properties. [312]

SCHEDULE B

Public Parks and Recreation Grounds.—Assessments are not to be made under Schedule B in respect of public parks or recreation grounds held in trust for and used solely by the public (*b*). [313]

Sewage Farms.—A sewage farm occupied by a local authority not being occupied "for the purpose of husbandry only" is to be assessed on the lower assessable value under Schedule B and not under Schedule D in respect of profits. The local authority cannot (1) elect under Rule 5, Schedule B to be assessed under Schedule D; or (2) obtain relief under Rule 6, Schedule B or sect. 34 of the Finance Act, 1918 (*c*). [314]

General.—Schedule B assessments on lands occupied by local authorities (including lands occupied as sewage farms) may be admitted for set-off against interest paid out of the relevant rate fund (*d*). [315]

SCHEDULE D

The liability to assessment under Schedule D of income tax is divided into six cases, but only three of these cases have any general application to local authorities. [316]

Case I.—This covers income or profits from any trade or business not assessed under any other schedule. Assessments upon local authorities in respect of their trading undertakings (markets, slaughter-houses, water, gas, electricity, tramways and omnibus undertakings) are made under this case. Certain of these undertakings were formerly assessed under Schedule A, but according to the rules of Schedule D;

(*u*) Agreed Rules, 5 (*k*).

(*b*) *Ibid.*, 16.

(*d*) *Ibid.*, 62.

(*a*) *Ibid.*, 5 (*l*).

(*c*) *Ibid.*, 15.

the only trading undertakings that are now outside the scope of Schedule D are those which come within the provisions of Schedule B. [317]

Case III.—This deals with tax liability for interest which is received by the local authority without deduction of tax. [318]

Interest and Dividends under Lunacy, etc., or Education Acts.—Relief is given in respect of untaxed interest and dividends received by local authorities under the Lunacy and Mental Treatment Acts, the Mental Deficiency Acts or the Education Acts and applicable to mental treatment or educational purposes only. This condition is strictly enforced and the relief does not extend, for instance, to untaxed interest and dividends arising from the redemption and sinking funds related to loans for the foregoing purposes, because such income does not become directly applicable to mental treatment or educational purposes but to the redemption of loans (e). [319]

Income from British Government Securities.—Untaxed income from this source is to be assessed upon local authorities on the statutory basis subject to a deduction for bank interest paid in full (f). The principle of separate rate funds must be observed and the deduction for bank interest is to be restricted accordingly. [320]

Bank Interest.—Agreed Rule No. 20 provides that all debits and credits of bank interest are to be regarded as actual expenditure and income and not as book-keeping entries. Debits and credits of bank interest appearing in the accounts of *non-trading undertakings of the same rate fund* are to be pooled and an assessment under Case III. is made on the net credit balance (if any). [320A]

Interest and Dividends arising from Redemption Funds, Loans Funds, Sinking Funds and Reserve Funds.—Untaxed interest of this kind is normally to be assessed in full (i.e. it is not subject to deduction for interest paid), where the income of the fund is required to be accumulated by the provisions of the Act under which it is established (g). (Under the L.G.A., 1933, the income from these funds is not required to be accumulated, but is carried to the rate fund out of which the contribution is to be made.) [321]

Housing (Assisted Scheme) 1919 Account.—Untaxed interest credited to the Housing (Assisted Scheme) 1919 Revenue Account or Repairs Fund should form the subject of a separate assessment (h). See p. 164, *post*. [322]

Police Pension Fund.—Untaxed income arising from the investment of former Police Pension Funds is to be assessed (i). [323]

Housing Acts—Special Arrangement.—Agreed Rule 25 gives effect to a special arrangement with local authorities, varying the ordinary tax procedure, whereby the local authority is assessed each year under Schedule D on the total amount of interest and ground or land rents arising under the Acts mentioned below and received without deduction of tax in the year of assessment subject to any necessary allowances therefrom of interest paid in full. The Acts referred to in this rule are the Small Dwellings Acquisition Acts, 1899 to 1923; Small Holdings and Allotments Acts, 1908 to 1931; Housing, Town Planning, etc., Act, 1919; Housing, etc., Act, 1923; Housing Act, 1925, and Housing Act, 1930—sect. 18 (5) (6).

Interest is paid to local authorities under these Acts by persons

(e) Agreed Rules, 23.

(g) *Ibid.*, 22.

(i) *Ibid.*, 26.

(f) *Ibid.*, 21.

(h) *Ibid.*, 24.

purchasing dwelling-houses or small holdings and the payment would normally be subjected to deduction of tax at the source. The local authority, on notification to the Inland Revenue, can receive the interest in full and pay tax over under the foregoing arrangement, the necessary relief being given by the Revenue to the individual purchaser. The arrangement is set out in full in Appendix I. of the Agreed Rules.

A similar arrangement can be applied to interest received by a local authority, without deduction of tax from frontagers in respect of private street works charges paid by agreed instalments in such circumstances that the right of recovery of the outstanding balance of charges is surrendered so long as instalments and interest are duly paid (k). [324]

Case VI. Liability.—This liability is for tax on any annual profits or gains not falling under Cases I. to V. or not charged under any other schedule. In its application to local authorities it covers liability for tax on profits or gains arising out of enterprises which are not carried on as a trade or business and run on commercial principles *with a view to profits*. The most frequent instances of the kind are receipts from bowling, tennis and boating in public parks; municipal golf courses and public conveniences, but, apparently, the commercial element may be present in regard to the provision of some of these amenities by holiday resorts. The assessment is made on a basis determined by the commissioners, but it is ordinarily made on the figures for the previous year.

The receipts from games in public parks may be pooled for all the parks provided by the local authority, and the same applies to the receipts from public conveniences. In addition to the expenses solely applicable to the said receipts, a reasonable proportion of general administrative expenses is also allowed as a deduction (l).

Municipal slaughterhouses are regarded as being conducted with a view to profit, unless the local Act or order under which they are carried on precludes the making of profits (m).

Public baths and washhouses are not regarded as trade undertakings unless they are open-air, medicinal, or similar special baths worked on ordinary commercial principles—cf. rule 58 quoted on p. 159, *post*. Open-air bathing pools run by local authorities of holiday resorts on lines which have become familiar in recent years are normally worked as commercial ventures and would be assessable under Case I. (n).

The differentiation of liability between Case I. and Case VI. as described is important from the point of view of the operation of Rule 13 of Schedule D, which permits a person who carries on two or more distinct trades, the profits of which are chargeable under the rules of that schedule, to deduct from or set-off against the profits as computed under the Act in respect of one of such trades, the loss so computed sustained in any other such trade. Losses on undertakings or enterprises under Case VI. may only be set-off against profit assessable under this same case and may not be set-off against profits chargeable under Case I. The right conferred by sect. 27 of the Finance Act, 1927, to carry forward taxes for recovery from profits of succeeding years, which applies to this Case, should also be noticed. [325]

Assessment upon Profits of Trading Undertakings under Case I.—The computation of profits for assessment under Case I. follows the ordinary

(k) Agreed Rules, 25 (a).

(m) *Ibid.*, 81.

(l) *Ibid.*, 30, 33.

(n) *Ibid.*, 32.

rules of Schedule D, but the following modifications or particular applications of these rules in the special circumstances of local authorities should be noted.

(a) *Set-off*.—Rule 13 as to set-off of losses on one undertaking against liability for profits on another undertaking operates only between undertakings belonging to the same rate fund.

(b) *Waterworks*.—Profits of waterworks are not liable to assessment so far as they are derived from the proceeds of a compulsory rate levied on all ratepayers of the area and payable by them whether the local authority's water is used or not. A water rate levied under the provisions of the P.H.A., 1875, is not a compulsory rate for this purpose. Profits from the non-compulsory supplies are assessed after deduction of expenses relating solely thereto, together with a reasonable proportion of the common expenses (o).

(c) *Tramways and Light Railways* may be owned by the local authority but let to a lessee at a rental which usually covers the interest and sinking fund contributions payable by the local authority on the loans raised for the construction of the works. In such cases the lessee is entitled to deduct tax from the full amount of the rent paid. The local authority is to be assessed on rent received without deduction of tax (p).

(d) *Insurance Fund*.—Contributions to an insurance fund of a local authority are not allowed as deductions in arriving at the tax liability in respect of trading undertakings, but an allowance will be made of so much of the actual disbursements out of such a fund as would, if they had been charged in the revenue account of the undertaking, be admissible expenditure for income tax purposes (q).

(e) *Composition for Stamp Duty* and other analogous charges are not admissible deductions, but the cost of the management of stock (exclusive of the cost of obtaining or renewing loans) is allowable (r).

(f) *Apportionment of General Administrative Expenses*.—A proportion of the admissible general administrative expenses will be allowed as a deduction in the computation of the profits of a trading undertaking, in the ratio of the revenue expenditure of that undertaking to the total revenue expenditure of the local authority. General administrative expenses are limited to such expenditure as can reasonably be held to be common to sources of income liable to income tax and to sources not so liable. Expenditure which is not admissible for tax purposes must be excluded.

For the purpose of this apportionment, revenue expenditure means the revenue expenditure actually appearing in the accounts and not expenditure as adjusted for income tax purposes. Debits for general administrative expenses must be excluded and also expenditure of a capital nature (e.g. sinking fund contributions and loan repayment instalments).

An allowance on this basis will be made although no apportionment is actually made in the accounts, and where the accounts of the undertaking include a reasonable allocation of general administrative expenses the actual apportionment made in the accounts may be accepted.

In the same way an apportionment may be made to trading undertakings of a proportion of the expenses of the collection of income, ascertained on the basis of the proportion that the amount collected or received for the undertaking bears to the total income collected or received in connection with all undertakings, rents, rates, etc. Where this apportionment is made, any costs of collection so apportioned must

(o) Agreed Rules, 27.

(q) *Ibid.*, 34.

(p) *Ibid.*, 28.

(r) *Ibid.*, 35.

be excluded from the general administrative expenses in making the apportionment of that item (s).

In this connection it should also be noted that where a part of the town hall or municipal offices, owned by the rate fund to which the trading undertaking belongs, is in the exclusive occupation of that undertaking, a proportion of the net Schedule A assessment appropriate to the part so occupied may be deducted in computing the profits of the undertaking (t).

(g) *Profit or Loss on Public Supplies.*—An adjustment necessary owing to the nature of a local authority as an income tax subject is the elimination of profit or loss on public supplies by trading undertakings. As has been shewn, a local authority is a separate tax entity in respect of each separate rate fund and in that capacity may, on the one hand, operate a trading undertaking or undertakings and, on the other hand, be responsible for the administration of non-trading services. For example, a local authority may operate a gas or electricity undertaking and supply gas or electricity for the purpose of the public lighting of its highways. A tax subject cannot be held to make a profit out of himself, and so any profit shewn in the accounts to have arisen out of such public supplies is to be eliminated; *per contra* any loss involved by such supplies cannot be allowed to diminish the liability of the authority for tax on the profits of its undertaking. Where only the actual cost of public supplies is charged to the non-trading service, the adjustment referred to will be unnecessary. Sales to other trading undertakings, associated with the same rate fund, are to be credited if a corresponding debit is made in the accounts of the undertaking receiving the supply. Sales by an undertaking to any other rate fund for non-trading purposes must be credited to the undertaking. Supplies of water, gas or electricity to houses belonging to the local authority and let at rents which include such supplies are not to be regarded as "public supplies" within the meaning of Rule 37. [326]

The profit or loss on public supplies is estimated:

- (1) by deducting from the total cost of production, expenses which relate *solely* to either public or private supplies;
- (2) by ascertaining the proportion of the balance so obtained, taken in the ratio borne by the income from public supplies to the total trading income (excluding any income exclusively received from public supplies, e.g. repairs to street lamps);
- (3) by taking the difference between the income from public supplies and the proportion of the general expenditure ascertained in (2).

The result is the profit or loss to be eliminated.

Where different scales of charges apply for public and private supplies, the amount that would have been received for public supplies within the area of the authority had these scales been uniform is to be substituted for the actual income in ascertaining the proportion of the general cost relating to public supplies, but in that case the profit or loss will be the difference between the actual income credited in the accounts and the cost so calculated. [327]

In the case of electricity undertakings, and gas undertakings also where income from residuals is small, profit or loss on public supplies may be calculated by reference to the proportion of units or quantity supplied instead of by reference to the actual income. In the case of electricity undertakings no objection will be raised to a division of the

(s) Agreed Rules, 36.

(t) *Ibid.*, 44.

variable or works expenses according to the number of units supplied and the non-variable or standing expenses according to the k.v. demand. The local authority has a choice of method, but the method chosen must be consistently adhered to. [328]

Admissible expenditure on renewals and allowances for obsolescence are to be included as expenses for the purpose of the above apportionment. The deduction of net Schedule A assessment or the deduction in respect of mills, factories, etc., is, for the purpose of the apportionment, to be regarded as relating solely to private supplies, and is consequently not to be restricted on the ground that a portion thereof is applicable to public supplies.

On the other hand, the allowance for wear and tear is to be restricted in the ratio of the profit on private supplies to the total profit of the undertaking or on the basis of the apportionment adopted for the purpose of ascertaining such profit. In the event of a loss on public supplies, the latter method is to be adopted (u). [329]

Interest Paid without Deduction of Tax.—Interest paid without deduction of tax (e.g. to the Public Works Loan Commissioners) in respect of a trading undertaking, is not to be allowed as an expense of the undertaking in computing profits (except where this has been the normal practice), but relief is to be granted in respect of such interest by reference to the amount paid in the year of assessment (v). [330]

Wear and Tear and Obsolescence.—Schemes for allowances for wear and tear in the case of electricity and transport undertakings have been agreed, and are set out in Appendix V. of the Agreed Rules (w). In the case of water, gas and other undertakings in respect of which no scheme of wear and tear allowances has been agreed, the actual expenditure on renewals is allowed as a deduction in computing the profits for assessment. In such cases also the balance of any exceptional expenditure on *bona fide* renewals can be carried forward in the same way as an unexhausted wear and tear allowance, for recovery in future years. [331]

Tramways Obsolescence.—In view of the strict interpretation of the general rule as to obsolescence allowance, the following provision should be noted; where a tramway system is replaced by either motor buses or trackless trolleys, a claim for obsolescence is to be admitted. For this purpose not only tramcars but other tramway plant, including the track, and, where omnibuses are substituted for cars, the overhead electrical equipment, may be regarded as plant or machinery replaced (a).

Losses; Set-off.—A loss sustained by a local authority in a trading undertaking may be set-off under Rule 13, Cases I. and II. of Schedule D against the profits of other trading undertakings belonging to the same rate fund. This set-off is permissible, notwithstanding any restriction on the application of the profits of an undertaking which would involve a corresponding restriction of set-off in the computation of the liability for tax deducted from interest paid. Relief under sect. 34 of the Income Tax Act, 1918 (b), is given only against taxed income of the rate fund to which the undertaking belongs. Losses may be carried forward and "set-off" against profits in the succeeding six years under sect. 33 of the Finance Act, 1926 (c). Relief under sect. 19 of the Finance Act, 1928 (d), in respect of the carrying forward of losses can only arise in circumstances where the authority has to account

(u) Agreed Rules, 33.

(w) *Ibid.*, 42 and Appendix V.

(b) 9 Statutes 442.

(c) *Ibid.*, 672.

(v) *Ibid.*, 41.

(a) *Ibid.*, 43.

(d) *Ibid.*, 706.

for tax deducted from interest paid in respect of the trading undertaking, and will be dealt with under that heading. [332]

ACCOUNTABILITY FOR TAX DEDUCTED ON PAYMENT OF INTEREST AND OTHER ANNUAL PAYMENTS NOT MADE OUT OF PROFITS OR GAINS BROUGHT INTO CHARGE.

After a local authority has borne tax with which it is chargeable under the various schedules it is necessary to ascertain whether there is any further liability in respect of tax deductions made from interest on loans and other annual payments which are not made out of profits or gains brought into charge to income tax. This liability depends upon the principle of collection of income tax at the source, but it arises only where tax deduction is authorised from a payment which is *not* made out of profits or gains brought into charge to the tax.

Thus, the duty under Schedule A (sometimes called the Property Tax) is a charge upon the rents and other profits arising from the *ownership* of lands and hereditaments, but is assessed upon the occupier who is authorised to recoup himself by deducting the amount of tax from his next payment of rent to the owner (e). If the landlord, suffering tax by deduction from rent paid by the occupier, has to make a payment of ground rent or interest on mortgage out of the rent received, he recoups himself for the tax suffered in respect of income belonging to someone else by paying the ground rent or mortgage interest under deduction of tax (f).

In such cases there is strictly no liability to account and the deduction of tax from the rent or from a payment made wholly out of taxed profits within Rule 19 of the General Rules applicable to all schedules, closes the transaction. The Crown is not concerned in any way with the deduction, and failure to recover by deduction of tax so paid is a matter entirely between the parties. [333]

Where interest is payable out of rates "the proper officer having the management of the accounts may be charged with the tax payable thereon and shall be answerable for all matters necessary to enable the tax to be duly charged and for the payment thereof, as if the rates or assessments were profits chargeable to tax, and shall be in like manner indemnified in respect of all such matters as if the said rates or assessments were chargeable" (g). This is the simplest case of accountability for tax, but a similar liability arises in respect of any interest, etc., which is not payable out of taxed profits. This liability is imposed by Rule 21, General Rules applicable to All Schedules of the Income Tax Act, 1918 (h), which is as follows: "(1) Upon payment of any interest of money, annuity, or other annual payment charged with tax under Schedule D, or of any royalty or other sum paid in respect of the user of a patent, not payable, or not wholly payable, out of profits or gains brought into charge, the person by or through whom any such payment is made shall deduct thereout a sum representing the amount of the tax thereon at the rate of tax in force at the time of payment.

"(2) Where any such payment as aforesaid is made by or through any person, that person shall forthwith deliver to the Commissioners of Inland Revenue, for the use of the special commissioners, an account

(e) Income Tax Act, 1918, Schedule A, No. VIII.; 9 Statutes 547.

(f) *Ibid.*, Rule 19; General Rules applicable to all Schedules; 9 Statutes 592.

(g) *Ibid.*, Rule 6; Miscellaneous Rules, Schedule D; 9 Statutes 580.

(h) 9 Statutes 598; printed as amended by s. 26 of the Finance Act, 1927.

of the payment, or of so much thereof as is not made out of profits or gains brought into charge, and of the tax deducted out of the payment or out of that part thereof, and the special commissioners shall assess and charge the payment of which an account is so delivered on that person."

Assessments to income tax under the various schedules are charges in respect of profits or gains within the meaning of the Income Tax Acts, and the problem of determining the liability of a local authority to account for tax deducted from interest on loans and other annual payments resolves itself into an inquiry as to what extent these profits or gains brought into charge are available for the payment of interest by the local authority. This depends upon the construction of Acts of Parliament which are not taxing statutes and whose provisions were made without regard to any question of tax liability.

In order to establish the right to retain tax deducted on payment of interest on loans as being wholly paid out of profits or gains brought into charge to the tax, it is necessary to show that the interest was in fact paid out of the profits in question or that the interest is able to be paid out of those profits (i). [334]

Set-off.—The right of a local authority to retain tax deducted from interest on loans as having been paid out of taxed profits or gains brought into charge is known as "set-off."

The expression "internal set-off" is used in the Agreed Rules to denote the taxed income of a trading undertaking including any Schedule D assessment (less any allowance for wear and tear and losses), the net Schedule A assessment on any premises owned by the undertaking, and other taxed receipts of the undertaking. Internal set-off is to be treated as being applied in the first instance in payment of the interest on any loans of the undertaking itself (k). If the interest paid by an undertaking exceeds the internal set-off, the excess is to be accounted for by the authority in the computation of the interest liability of the rate fund with which the undertaking is associated (l).

"External set-off" is used to denote the taxed income of a trading undertaking which is available to meet interest paid out of the relevant rate fund other than interest paid in respect of the undertaking itself (m).

As a description of the right of retention of tax deductions the expression "set-off" is not particularly apt. It is more correctly used in connection with the right of a local authority to set-off a loss incurred by one undertaking against profits made by another undertaking which is associated with the same rate fund (n).

In the case of income tax charged on a local authority, the liability of the authority to account for tax deductions from interest and other annual payments has to be determined separately in respect of each rate fund and the right of set-off is restricted to the same rate fund (o).

It should be noted that the rating authority is a different entity from the local authority, although it is the same body, but in any event taxed income of the rating authority, e.g. bank interest, is " earmarked "

(i) *Sugden v. Leeds Corpn.*, [1914] A. C. 483 ; 28 Digest 74, 397.

(k) Agreed Rules, 51.

(l) *Ibid.*

(m) *Ibid.*, 52.

(n) Income Tax Act, 1918, Rule 13, Schedule D ; 9 Statutes 571. See *ante*, p. 132.

(o) Agreed Rules, 50.

by sect. 58 (5) of the R. & V.A., 1925 (p), and so is not available for set-off purposes in the rate fund of the local authority.

The Agreed Rules regarding the right of set-off attempt to give expression to the principle as laid down in a series of legal decisions, and a brief review of some of these cases will assist very materially a consideration of those rules. [334A]

Profits or Gains brought into Charge ; L.C.C. Cases.—A case decided by the House of Lords in 1900 (q) established the right of a local authority to retain tax deducted on payment of interest on loans to the extent of the profits or gains brought into charge under Schedule A in respect of rents and profits derived from the ownership of property which the council owned *and let*. The contention of the Crown in this case was that inasmuch as interest on loans was a form of income chargeable under the Income Tax Acts under Schedule D it could not be paid out of profits or gains which were brought into charge to tax under Schedule A ; it was claimed, in fact, that Schedule A and Schedule D were different taxes. The House of Lords held that they were the same tax assessed for convenience under different schedules of the Income Tax Acts. The principle established in this case is expressed in Agreed Rule 56 as follows :—

56. *Property Owned and Let.*—The set-off to be allowed in respect of property owned and let is not to exceed :

- (a) the net Schedule A assessment, less ground or lease rent ; or
- (b) where the net Schedule A assessment exceeds the rent received, the rent less the charges.

In the case of property assessed under Schedule A which is occupied by employees of non-trading undertakings who pay rent therefor either directly or by deduction from their remuneration, the set-off is to be restricted to :

- (i.) the net Schedule A assessment, or the appropriate portion thereof where the assessment includes more than the premises rented by the employee ; or
- (ii.) the amount of rent remaining after deduction of :
 - (1) rates payable by the owner ;
 - (2) the statutory allowance for repairs ; and
 - (3) the cost of any services rendered by the owner pursuant to the conditions of tenancy,
 whichever is the less.

In a later case (r) which also went to the House of Lords, the L.C.C. sought to retain tax deducted on payment of interest on loans to the extent of Schedule A assessments, in respect of properties which it owned *and occupied*. The decision in this case was in favour of the Crown, and in this respect the position of a local authority in regard to tax liability is different from that of a "person." It is common practice for a person assessed under Schedule A in respect of his dwelling-house or business premises, to deduct and retain tax on payment of interest on mortgage secured on the premises which are assessed under Schedule A. The House of Lords held in this case that the occupation by the local authority of the premises assessed under Schedule A exhausted the profits or gains represented by the annual value, and that, consequently, any interest on the loans (although secured at least partly on the properties) could not, in fact, be paid out of those profits.

(p) 14 Statutes 677.

(q) *L.C.C. v. A.-G.*, [1901] A.C. 26 ; 28 Digest 73, 392.

(r) *A.-G. v. L.C.C.*, [1907] A.C. 131 ; 28 Digest 73, 393.

Although it was established by this case that no set-off could be claimed in respect of the annual value of property owned and occupied by the local authority, a concession is made where the property produces incidental income from lettings by the allowance of a proportion of the net Schedule A assessment. A common example is provided by town halls, where rooms may be available for occasional lettings. The proportion of net Schedule A assessment which is available for set-off in such circumstances is determined by the ratio of the income from lettings to the total net Schedule A assessment, plus running expenses (including repairs and administrative expenses) of the premises.

The following Agreed Rules should also be noted in this connection :

58. *Public Baths and Washhouses.*—In the case of public baths and washhouses, one-half of the net Schedule A assessment (after deducting any ground rent, lease rent, etc.) is admissible as a set-off, except in the case of buildings provided mainly for open-air, medicinal or similar baths which are worked on commercial principles with a view to profit.

59. *Sewage Works and Sewage Farms.*—The Schedule A assessments on sewage works and sewage farms occupied by a local authority are not available as set-offs, but set-offs may be allowed in respect of any taxed income from easements, etc., and in respect of the Schedule B assessments on such sewage farms.

60. *Loans secured Solely on Certain Properties.*—Some long-standing loans in connection with sewage works, sewage farms and town halls owned and occupied by certain local authorities are secured by a mortgage on the property without the collateral security of the rates. In such a case the Schedule A assessment may be treated as available for set-off against the interest on the particular loan so secured, but not against any other interest payable by the local authority.

61. *Properties of Trading Undertakings.*—The Schedule A assessments on the properties of trading undertakings (including any proportion of the assessment upon the town hall or municipal offices deducted under Rule 44) are to be added to the Schedule D profits in arriving at the amount available as a set-off. Where there is no Schedule D profit, the amount of the Schedule A assessment upon which tax has been paid for the year in which the interest is paid is to be treated as the income by reference to which (subject to the usual restrictions, if the profits are earmarked by statute to loan repayments, etc.) the external set-off is to be calculated.

62. *Schedule B Assessments.*—The Schedule B assessments on any lands occupied by local authorities, including lands occupied as sewage farms (see Rule 59), may be admitted for set-off against interest paid out of the relevant rate fund.

[335]

Availability of Set-off. Sugden v. Leeds Corporation (s).—This case was brought by the corporation with a view to establishing the position that the corporation was, for income tax purposes, a single entity. The figures involved, which were for the year 1908, were :

	Taxed Income, £	Int. paid from which Tax deducted, £
City Fund - - -	225,268	146,740
Consolidated Fund - - -	44,768	138,607
	<hr/> £270,036	<hr/> £285,446

In the aggregate, therefore, the corporation had borne tax on various profits and gains amounting to £270,036 and, on the other hand, had deducted tax on payment of interest on loans amounting to £285,446. There was no dispute that the corporation must pay over to the Inland Revenue the tax on the difference between these two amounts of £15,410. The Crown, however, claimed tax on £93,929, the deficiency of the taxed income on the Consolidated Fund, contending that the surplus of taxed income on the City Fund was not available for payment of the interest on loans paid out of the Consolidated Fund, such interest

(s) [1914] A. C. 483 ; 28 Digest 74, 397.

not being effectively charged under the various Acts and orders on the rents and profits of the undertakings of the corporation. The City Fund and the Consolidated Fund, together with the associated rates, were in every respect analogous to the Borough Fund established under the Municipal Corporations Act, and the General District Fund established under the P.H.As. and their respective rates. The justification of the corporation for their claim was based upon the fact that by a private Act of 1901, a common security—the lands and estates, the water, gas and other the undertakings of the corporation—was given for all loans issued by the corporation. In the House of Lords the contention of the Crown succeeded and the decision of the Court of Appeal was reversed. The effect of the judgments in regard to the various questions involved was :

- (1) That the common security whereby loans raised for purposes of the Consolidated Fund were charged equally with those raised for purposes of the City Fund indifferently on all the property and undertakings of the corporation, whilst it might extend the remedies of a lender in a hostile proceeding against the corporation, did not make the interest paid out of the fund an *operative* charge upon the revenues of the City Fund in the sense that such interest could be legally paid out of those revenues.

The 1901 Act did not repeal the provisions in the older Acts containing directions as to the appropriation of the various revenues, and especially did not repeal the statutory provisions regulating the City Fund and the Consolidated Fund. Even if such a repeal could be implied, it would be inconsistent with other provisions of the 1901 Act, which required the corporation to keep separate accounts relative to each undertaking and to make contributions to the Consolidated Loans Fund for payment of interest and sinking fund, out of the several revenues specifically charged, or, in the absence of such specific liability, out of the several revenues out of which the contributions would be properly payable, having regard to the purpose for which the borrowing powers were given.

- (2) A passage in the judgment of Lord DAVEY in the first L.C.C. case that "it is enough if the interest is charged on or payable out of the taxable income, though there may be other subjects of charge," was examined, and the view was taken that the expressions "charged on" and "payable out of" were not antithetical, but that the latter expression merely explained the meaning of the former.
- (3) Before, therefore, a debtor who has paid interest or annuities brought into charge to the income tax, had the right to retain for his own profit the amount of the tax he has deducted from his creditors, an affirmative answer must be possible to each of the two following questions :
 - (a) Have the interest and annuities been, in fact, paid, or must they, in the circumstances of the case, be taken to have been, in fact, paid out of profits or gains brought into charge ?
 - (b) Is it lawful to pay them out of that fund ?

One result of the decision, as incorporated in the Agreed Rules, which is favourable to local authorities, is that the right of external set-off

is established in regard to the profits of a trading undertaking, notwithstanding that there has not, in fact, been any actual transfer of profits from the trading undertaking to the appropriate Rate Fund. Previously, set-off had been restricted to profits which had been, in fact, transferred. [336]

Earmarked Income not Available as Set-off.—On the other hand, there can be no set-off allowed in respect of income specifically earmarked to purposes other than the relief of rates, e.g. the taxed income of an endowment for the upkeep of a public clock or of a public park (t).

In the same way, if the income of a sinking or redemption fund is required to be accumulated in the fund, it is not available for set-off, being earmarked to the particular sinking or redemption fund (u).

Sect. 79 of the P.H.A., 1925 (w), by amending sect. 234 (4) of the P.H.A., 1875, so as to provide that the income from investments of any sinking fund established under the latter Act should "form part of the revenue . . . of the fund or rate out of which the sums were set apart," had made such income available as set-off in the case of sinking funds established under the P.H.A., 1875, and also under other Acts of Parliament which applied the borrowing provisions of the Act of 1875. Sect. 79 has now been superseded by sect. 213 (3) of the L.G.A., 1933 (a), which is to the same effect, but applies generally to accumulating sinking funds set up by a local authority.

Where the income from investment of a reserve fund is required to be accumulated until the fund reaches a specified amount, this also is not available for set-off until the fund has reached the specified amount (b). [337]

The availability, for external set-off purposes, of the profits of a trading undertaking depends upon the statutory provisions governing the appropriation of the revenues of the undertaking. These provisions usually include directions as to some or all of the following purposes to which the revenue shall be applied:

- (i.) Working and establishment expenses and cost of maintenance of the undertaking.
- (ii.) Interest on monies borrowed and applied for purposes of the undertaking.
- (iii.) Repayment of instalments of loans or sinking fund payments in respect of monies borrowed and applied for the purpose of the undertaking.
- (iv.) Any other expenses of maintaining the undertaking.
- (v.) Extending or improving the undertaking.
- (vi.) The creation (if the authority thinks fit) of a Reserve Fund.

Having made these payments, it is usually provided that any surplus of revenue may be applied to the credit of the Rate Fund to which the undertaking relates, and by which the deficiency of revenue (if any) is to be met. The power to apply any balance to the credit of the Rate Fund makes such surplus available for set-off, although there may not have been, in fact, any transfer to the Rate Fund (c).

Sometimes the local Act or provisional order provides that no

(t) Agreed Rules, 55.

(w) 18 Statutes 1152.

(b) Agreed Rules, 76.

L.G.L. VII.—11

(u) *Ibid.*, 70.

(a) 26 Statutes 420.

(c) *Ibid.*, 72.

part of the revenue of the undertaking shall be carried to the Rate Fund when the price of the commodity supplied (*e.g.* gas) exceeds a certain figure, and in such circumstances no part of the profit of the undertaking will be available for external set-off so long as the stated price is exceeded (*d*).

Where the statutory provisions governing appropriation of the revenues of the undertaking permit an authority, if it thinks fit, to make a contribution to a Reserve Fund before the surplus is arrived at, and the authority does, in fact, make such contribution, the appropriation must be regarded, for external set-off purposes, as a compulsory application of revenues (*e*). [388]

The variation of the statutory appropriation of revenues of electricity undertakings under sect. 7 of the Schedule to the Electric Lighting (Clauses) Act, 1899 (*f*), by the Fifth Schedule to the Electricity (Supply) Act, 1926, by regulating and restricting the transfer of profits of an electricity undertaking to the Rate Fund, necessarily restricted the availability of the profits for external set-off purposes, and the precise effect of this restriction is detailed in Agreed Rule 81.

The Agreed Rules define "Outstanding Debt of the Undertaking" and "Aggregate Capital Expenditure" in terms which reasonably give effect to the restriction imposed by the 1926 Act (*g*).

It is considered unfortunate that this amendment of the law which was designed solely in the interests of sound development of electricity supplies, should have an adverse effect on the liability of a local authority to income tax, but that is clearly the legal consequence of the decision in the Leeds case (*h*). [389]

Tax Deductions from Interest on Loans which must be Accounted for notwithstanding Availability of External Set-off. *Housing (Assisted Scheme) 1919 Account.*—This aspect of the question of "set-off" was raised in the cases of *Dickson v. Hampstead Borough Council* (*i*) and *Birmingham Corporation v. Inland Revenue Commissioners* (*k*). The facts in the two cases were similar, but Hampstead, being a metropolitan borough council, received the Government subsidy under the Housing Act, 1919, through the L.C.C. Under the Act of 1919, authorities administering an assisted housing scheme were required to keep a separate account relating to the scheme, the object of which was to arrive at the amount of the Government subsidy. The measure of this subsidy was the whole of the deficit of the scheme as shewn by the account, after crediting a contribution by the local authority of the proceeds of a penny rate. One of the items charged to this statutory account was to be the amount required to meet the interest and debt redemption charges on loans raised in connection with the scheme. The tax position was, that the houses were assessed to Schedule A and the amount of the assessment was available for set-off against the liability for tax deducted from interest on the housing loans (*l*), but normally there was a large excess of tax deduction from interest which had to be accounted for to the Crown. The local authorities contended that the Housing (Assisted Scheme) Account was an integral part of the

(*d*) Agreed Rules, 78.

(*e*) *Ibid.*, 74.

(*f*) 7 Statutes 709; printed as amended by the Act of 1926.

(*g*) Agreed Rules, 82, 83.

(*h*) *Ante*, p. 160.

(*i*) (1927), 91 J. P. 146; Digest (Supp.).

(*k*) [1980] A. C. 307; Digest (Supp.).

(*l*) *L.C.C. v. A.-G.*, [1901] A. C. 26; 28 Digest 73, 392; see *ante*, p. 158.

District Fund, and that, consequently, surplus taxed profits of the District Fund (including profits of trading undertakings associated with that fund) could be applied to the payment of excess interest on housing loans not covered by the Schedule A assessments. The Crown submitted that the statutory housing account constituted a separate taxable entity and that tax deductions from interest on housing loans not covered by the Schedule A assessment, must be paid over to the revenue. This contention was definitely rejected by the House of Lords, although the decision was in favour of the Crown. The statutory housing account under the 1919 Act was for the purpose of ascertaining the amount of a deficit which was to be borne by the M. of H., and the amount required to meet the interest charge on loans was shown in that account at the gross figure. This could only be the fact on the assumption that the interest was not paid out of taxed profits (otherwise the tax could be retained and the amount required would be the net amount), and the corporation could not, subsequently, in adjusting the tax liability of the corporation with another department of the Government—the Inland Revenue—claim that the interest had been paid out of taxed profits of the District Fund. On this view the decision has nothing to do with the principle of set-off, being based rather upon the equitable doctrine of estoppel. [340]

This decision is applied in the Agreed Rules as follows :

63. *Housing (Assisted Scheme) Revenue Account.*—(a) A Housing (Assisted Scheme) Revenue Account relating to a scheme under the Housing, Town Planning, etc., Act, 1919, is to be the subject of a separate set-off statement.

(b) The Ministry of Health makes good any approved deficiency on the account after deducting therefrom an amount equal to the produce of a penny rate. The approved deficiency is ascertained on the basis of either :

- (i.) the actual loss resulting during the year; or
- (ii.) the estimated annual loss computed as at a given date for each of the remaining periods allowed for the repayment of loans raised for the purpose of the scheme; or
- (iii.) the estimated annual loss ascertained by taking actual income and expenditure as respects some of the items required to be brought into the account and estimated income and expenditure as respects other such items.

Under method (i.), the rate contribution will be the exact produce of a penny rate. Where, however, method (ii.) or (iii.) is adopted, the rate contribution necessary to balance the account may be greater or less than the produce of a penny rate.

(c) The set-off against interest paid by the account should therefore be limited to :

- (i.) the taxed income of the account itself (e.g. Schedule A assessments and interest received, including interest on Repairs Fund); and
- (ii.) where the Rate Fund which provides the rate contribution has a surplus of taxed income available for set-off, the amount of such surplus up to the amount of the rate contribution.

(d) The whole of the approved deficiency on the account of a metropolitan borough council is made good out of the L.C.C.'s Housing (Assisted Scheme), 1919, Revenue Account. The set-off in such a case is to be limited to the taxed income of the account itself, and will not include any rate contribution unless method (b) (ii.) or (iii.) above has been adopted in ascertaining the approved deficiency and a rate contribution is necessary to balance the account. Where such a rate contribution is necessitated, the set-off is to be computed as provided in (c) above.

(e) Where the interest is paid in full (e.g. to the Public Works Loan Commissioners—see Rule 58) any relief is to be limited as in (c) (i.) and (ii.) above.

It is clear from this rule that the principle established by the first L.C.C. case that the net Schedule A assessments of property owned and let by the local authority are available for set-off purposes, is not affected. Indeed, the Agreed Rules declare that such assessments in

the case of houses erected under the Housing Acts of 1890, 1923, 1925 and 1930 are so available (m). [341]

The question in the Birmingham case was as to the availability of other taxed profits of the authority for payment of the housing interest, and the special circumstances of the statutory housing account under the 1919 Act were held to prevent these profits from being made available.

Similar circumstances do not exist in the case of Housing Schemes under the 1923, 1924 and 1930 Housing Acts (the Government subsidy being a fixed amount per unit) and it is claimed by the Institute of Municipal Treasurers and Accountants that the taxed profits of the authority are available for payment of interest on housing loans not covered by the set-off of the net Schedule A assessments, the Housing Assisted Schemes Account being an integral part of the General Rate Fund. This claim is not admitted by the Inland Revenue, who regard the housing grants as a form of earmarked income (*ante*, p. 161) which is to be applied in the first instance to the annual expenses of the scheme (other than interest), and, if the taxed income of a year (*i.e.* the Schedule A assessments) is insufficient to cover the interest paid, the amount of interest not covered is to be deemed to be paid out of the grant to the extent that the grant exceeds the expenditure other than interest (n). There being no agreement on this matter the correctness of either claim can only be established by litigation. [342]

Housing Act, 1935.—Under this Act the various housing accounts are to be consolidated and the subsidy under the 1919 Act will in future be paid under conditions which might be shewn to avoid the effect of the judgment in the Birmingham case. The statutory Housing Revenue Account required under the 1935 Act does not, however, dispose of the question of earmarking of subsidies raised by the Inland Revenue under the Acts of 1923, 1924 and 1930 (see *supra*). Here again, therefore, the question will presumably have to be finally determined by the Courts. [343]

Unemployment Grants.—The next case to be noted is that of *Seaham Harbour Dock Co. v. Crook* (o). The facts were that the harbour authority had received from the Government an unemployment relief grant in respect of certain works carried out by the authority. The grant took the form of an annual contribution of a certain proportion of the loan charges on the capital raised for carrying out the work. This annual grant was brought into the revenue account, and the Inland Revenue included the amount in computing the profits of the authority for the purpose of assessment under Schedule D. In the Birmingham Housing case the Court took the view that the local authority, receiving a subsidy from one Government department, sought to receive an additional benefit through the medium of another department of the Crown. In the Seaham Harbour case the Government, having through one of its departments made a grant on a covenanted basis, sought to recover some part of it through another department. In this case the Crown failed in its attempt. The grant was held to be a contribution towards the capital cost of the works in respect of which it was promised, and the form of payment (by annual instalments bearing a definite relation to the annual loan charges) did not affect the real nature of the grant which was capital and, therefore, not assessable.

Where a local authority is in receipt of an unemployment grant in

(m) Agreed Rules, 64.

(n) *Ibid.*, Supplement C.

(o) (1931), 16 Tax Cas. 333; Digest (Supp.).

respect of a trading undertaking, the circumstances are entirely analogous with those in the case and the decision would apply.

The essence of the judgment being that the grant was a capital contribution, although expressed in terms of a percentage of the annual loan charges, the decision would apply equally to unemployment relief grants received by a local authority in respect of non-trading works, *e.g.* roads and sewage works. An arrangement, which existed prior to the decision, that the unemployment grant should be regarded as applicable, in the first instance, to the sinking fund contribution in respect of the works, and that any excess should be regarded as earmarked to the payment of interest on the capital cost of the works has, therefore, been rendered inapplicable. To the extent that the grant was formerly regarded as being so earmarked, it was not possible for the local authority to obtain the set-off of available taxed profits as having been applied to the payment of such interest. It will be seen that the arrangement followed lines similar to those accepted by the Inland Revenue in connection with assisted housing schemes other than the 1919 scheme. [344]

Effect of Unemployment Grants upon Wear and Tear Allowance.—The case of *Birmingham Corporation v. Barnes* (p) was also concerned with unemployment grants, but the question of set-off was not involved. It was decided in that case that where an unemployment grant had been received in respect of works or plant which were subject to an allowance for wear and tear, the "actual cost" to the authority of such works or plant was not reduced for the purpose of the wear and tear allowance. [345]

Computation of External Set-off.—The principles which are to be applied in the computation of external set-off have already been discussed in connection with the effect of statutory provisions governing the appropriation of the revenues of trading undertakings, but the following matters have not been dealt with in the Agreed Rules to which reference has so far been made.

Agreed Rules 72 to 74 set up a bar to the availability of certain taxed profits for set-off purposes, but it is necessary in addition to say that the right of set-off cannot extend to any sums (*e.g.* ground rents) debited in the accounts, from which the authority has a right to deduct tax on payment. On the other hand, any sum available as external set-off is not to be diminished by the amount of any expenditure disallowed in computing the profits for assessment under Schedule D, unless the expenditure represents a compulsory appropriation of the revenues of the undertaking, in pursuance of the provisions of the Act regulating such appropriation (q). [346]

The sinking fund contribution or loan repayment provision made in the accounts of the trading undertaking is a statutory appropriation of revenues which is similar in effect to the wear and tear allowance, and, consequently, where the wear and tear allowance made from the assessment of the profits exceeds the provision for debt redemption, the wear and tear allowance is to be substituted as the statutory appropriation for the purpose of calculation of external set-off (r). In making the comparison the additional allowance to mills, factories, etc., under Rule 5 (2), Cases I. and II. of Schedule D (s), must be taken

(p) [1935] A. C. 292; Digest (Supp.).

(q) Agreed Rules, 75.

(s) 9 Statutes 566.

(r) *Ibid.*, 78.

into account as wear and tear, it being in fact a wear and tear allowance for buildings which contain vibratory machinery.

In making the comparison, also, the sinking fund provision is to be reduced by the amount of any "profits on public supplies" deducted in assessing the profits of the undertaking (*t*), because these profits, although not taxable, are, nevertheless, available to the authority for the purpose of making the appropriation to the sinking fund. Moreover, the wear and tear allowance made from the assessed profits is similarly restricted.

Any allowance for obsolescence is also used to restrict the amount of sinking fund or loan repayment provision for the purpose of this rule (*u*).

In the case of an undertaking to which the allowance for wear and tear is inapplicable (*e.g.* gas and water undertakings) a deduction is allowed for renewals in lieu thereof, in assessing the profit of the undertaking. In calculating the external set-off the amount of the sinking fund provision is to be restricted to the sum (if any) by which such contribution and repayment exceed the deduction for renewals (excluding ordinary repairs or renewals of parts, but including the deduction for mills, factories, etc.) allowed in arriving at the assessable profit (*x*).

The distinction between undertakings subject to a wear and tear allowance and those subject to deduction of renewals in computing profits is not so clearly marked as the Agreed Rules suggest. Thus a gas undertaking is subject to a wear and tear allowance for buildings containing moving machinery, and electricity undertakings are allowed a deduction for renewals, *e.g.*, meters. [347]

Interest Payable without Deduction of Tax.—A minor complication is introduced into the settlement of the tax liability of a local authority by certain interest being paid by the authority without deduction of tax at the source. The most usual cases, apart from Bank Interest which is invariably paid gross, are: Interest paid to the Public Works Loans Commissioners, the M. of H. or other Government department, and interest on a local bond under the Housing Acts paid to the registered holder of bonds of a nominal amount not exceeding in the aggregate £100. Such interest is nevertheless taxable under the Income Tax Acts, and a local authority is entitled to some relief in respect of the gross payment to the extent that the interest is paid out of available taxed profits belonging to the same rate fund as is chargeable with the payment of the interest (*a*). If relief in respect of the interest paid in any year cannot be given (1) by allowance against the assessment of the profits of a trading undertaking charged with the payment of the interest (see *infra*, Agreed Rule 41); or (2) by allowance against direct assessments on rents or profits belonging to the same rate fund as that out of which the interest is payable, then it should be given by repayment (*b*).

A statement illustrating the more important features of set-off, the availability of taxed profits for payment of interest, and the adjustment of the liability of a local authority to income tax, is given *post*, at pp. 169—172. [348]

Carry Forward of Losses; Finance Act, 1928. Relief under sect. 19 of the Finance Act, 1928 (as amended by sect. 19 of the Finance Act,

(*t*) Agreed Rules, 79.

(*x*) *Ibid.*, 80.

(*b*) *Ibid.*

(*u*) *Ibid.*, 78.

(*a*) *Ibid.*, 41, 53.

1932) (c), extends the general right to "carry forward" losses given by sect. 33 of the Finance Act, 1926 (d), to an assessment made under General Rule 21 in respect of tax deducted from interest not paid out of profits or gains brought into charge, and is dealt with under this part of the title rather than under chargeability to Schedule D because the relief is made dependent upon the computation of the available set-off in the final adjustment of the liability of the local authority. Agreed Rule 85, which deals with this relief, is as follows:

Where in any year the interest paid in connection with a trading undertaking exceeds the taxed income of the undertaking, and, after merging the excess in the appropriate Rate Fund set-off computation, there remains a balance of interest payable out of the rate, the amount to be carried forward under sect. 19, Finance Act, 1928, is the amount of the assessment in respect of that balance of interest or the amount by which the trading interest exceeds the taxed income of the undertaking, *whichever is the less*.

Agreed Rule 84 applies the relief under this section

"in respect of interest paid for the purpose of a trading undertaking, notwithstanding that the assessment in respect of such interest may be made in accordance with Miscellaneous Rule 6, Schedule D, and not under Rule 21, General Rules, Income Tax Act, 1918."

Agreed Rule 86 provides:

"Where the amount of any interest paid without deduction of tax is dealt with according to the correct method described in Agreed Rule 41 (*ante*, p. 155) and exceeds the available set-off the balance may be carried forward under sect. 19 of the Finance Act, 1928, as though it were interest in respect of which an assessment under Miscellaneous Rule 6, Schedule D had been made."

Some reference to the operation of this relief is made in a note to the computation of the waterworks set-off, *post*, at p. 171; a fuller explanation would have unduly complicated the illustration. [849]

Private Legislation and the Right of Set-off.—As has been already indicated, the Agreed Rules are intended to represent the expression of the principles governing the assessment of local authorities to income tax under general provisions of the law. Local authorities, however, have endeavoured to secure, by private legislation, powers which would enable them to overcome the adverse effects of general legislation (other than taxing statutes) on their liability to income tax.

The powers obtained have been directed more particularly to overcoming the effect of the decision in the Leeds case in restricting the rights of set-off of profits of trading undertakings, and the consequences of the Electricity (Supply) Act, 1926 (e), flowing from that decision. They can be conveniently referred to under two headings as "Chesterfield" and "Brighton" Clauses respectively. The effect of the clauses obtained in the Chesterfield Corporation Act, 1923, is to merge into the Rate Fund the receipts and payments of the trading undertakings of the corporation, and thus to make any statutory appropriations of the revenue of those undertakings *payments out of the Rate Fund*. The whole of the taxable profits of the undertakings are thus available in the Rate Fund without any restriction. Provision is, however, made for separate accounts to be kept relating to the undertakings. Other authorities seeking the same powers after the passing of the Electricity (Supply) Act, 1926, have had to submit to a

(c) 9 Statutes 706; 25 Statutes 205.

(e) 7 Statutes 792. See also p. 162, *ante*.

(d) 9 Statutes 672.

proviso that the provisions of the 1926 Act should not be affected. These authorities do not, therefore, escape the restriction imposed upon the transfer of profits of the electricity undertaking to the Rate Fund, although the external set-off is not restricted by the provision for sinking fund and loan repayment, these items being in law a payment out of the Rate Fund and not out of the taxed profits of the undertaking.

The L.G.A., 1933, by the provision that all receipts of a local authority are to be carried into the Rate Fund and all liabilities falling to be discharged by the authority shall be discharged out of that fund, would seem to have the same effect as the Chesterfield clauses, in that statutory appropriations of the revenue of trading undertakings are converted into payments out of the Rate Fund. [350]

The "Brighton" Clauses were incorporated into the Brighton Corporation Act, 1931, after a full discussion before the parliamentary committee in the course of which the purpose of the clauses was frankly stated. These clauses include:—

(1) The Chesterfield provision that income and expenditure of trading undertakings are to be paid into and out of the General Rate Fund. (2) Provision that the excess revenue of the undertakings for working and establishment expenses, loan charges and other revenue expenses may be applied (a) in redemption of debt, (b) towards capital expenditure, or (c) in providing a Reserve Fund. (Any such appropriation would be thus made out of the General Rate Fund.) (8) In the case of the electricity undertaking, (a) if the Reserve Fund does not exceed 5 per cent. of the aggregate capital expenditure, an amount equal to the surplus income of the electricity undertaking is deemed to be revenue of the following year and must be applied in reduction of electricity charges; (b) if the Reserve Fund exceeds 5 per cent. of the aggregate capital expenditure and the surplus income exceeds $1\frac{1}{2}$ per cent. of the outstanding debt on the undertaking, an amount not less than the surplus in excess of $1\frac{1}{2}$ per cent. is deemed to be revenue of the following year and must be applied in reduction of electricity charges.

The effect, broadly, of these provisions—at least the intended effect—is to ensure that no electricity profits in excess of $1\frac{1}{2}$ per cent. of the outstanding debt on the undertaking are retained in the Rate Fund. This preserves the limitation imposed by the Electricity (Supply) Act, 1926, but without adversely affecting the rights of set-off, since all income of the undertaking is regarded as income of the Rate Fund in the year in which it is earned. [351]

It is understood, however, that the Inland Revenue have recently expressed some doubt as to the effectiveness of both the Chesterfield and the Brighton Clauses, in avoiding a restriction of the set-off rights, and have intimated their intention to seek a decision in the Courts.

Whilst the intellectual exercise involved in devising and demolishing schemes of this kind is, perhaps, not entirely without some benefit, it is submitted that a better way would be to secure, in the future, that statutory provisions (in a non-taxing Act) made solely in the interests of sound and prudent finance, should expressly exclude the possibility of any adventitious gain to the national revenue by an unremediated effect on the tax liability of local authorities. [352]

STATEMENT SHOWING COMPUTATION OF EXTERNAL SET-OFF AND FINAL ADJUSTMENT OF THE LIABILITY OF A LOCAL AUTHORITY TO ACCOUNT FOR TAX DEDUCTIONS FROM INTEREST ON LOANS AND OTHER ANNUAL PAYMENTS.

I.

Data assumed for exemplification.

Transactions.	Rate Fund Services.	1919 Housing Scheme.	Undertakings.	
			Electricity.	Waterworks.
CHARGEABILITY.	£	£	£	£
<i>A. Direct Assessments.</i>				
Schedule A assessments on properties owned and let	10,000	20,000	—	—
Schedule A assessments on properties owned and occupied	(a) 2,000	—	5,000	400
Schedule D assessments on profits	—	—	60,000(e)	20,000(e)
Schedule D assessments, bank and other interest received gross	10,000	—	—	—
<i>B. Suffered by Deduction.</i>				
Investment income free	4,000	800	3,000	2,000
Do, earmarked	(b) 4,000	—	—	(c) 8,000
Lease, ground and rack rents received	5,000	—	500	400
ACCOUNTABILITY.				
Interest on loans—paid in full	2,000	—	—	—
under deduction	50,000	40,000	40,000	30,000
Rents, etc.—paid under deduction	400	—	400	200

II.

Further data required for computation of set-off and adjustment of liability.

<i>Electricity Undertaking.</i>	£
Allowances made:	
Renewals expenditure in computing the adjusted profits	2,000
Obsolescence	1,000
"Mills, factories," etc. (difference between gross and net Schedule A assessment)	1,000 (d)
Profits on public supplies	4,000
Wear and tear allowance	20,000
Contributions to Sinking Fund	30,000
Contribution to Reserve Fund	8,000
Total amount to credit of Reserve Fund	51,000
Outstanding debt	600,000
Aggregate capital expenditure	1,000,000
<i>Housing (Assisted Scheme), 1919.</i>	
Product of 1d. rate	2,000
<i>Other Undertakings (not exemplified).</i>	
Statutory losses, see p. 166 and note (j), <i>supra</i> , p. 172	3,000
External set-off available in Rate Fund	25,000

NOTE.—Items (a), (b) and (c) do not appear in the set-off computations for the reason that this income is not available for payment of interest.

(a) No set-off. *A.-G. v. L.C.C.*; see p. 158, *ante*.

(b) and (c) No set-off. *Syden v. Leeds Corpn.*; see pp. 145, 157, 159, *ante*. The funds (an Insurance Fund and Reserve Fund respectively) have not reached their statutory maximum.

(d) This is equivalent to a wear and tear allowance on buildings containing vibratory machinery (Rule 5 (2), Cases I. and II., Schedule D, Income Tax Act, 1918); see pp. 165, 166, *ante*.

(e) *I.e.* after allowance of wear and tear.

III.

Set-off Computations.

<i>Electricity Undertaking.</i>		£	£
<i>Taxed Income.</i>			
Schedule D.—Profits, i.e. after allowance of wear and tear	—	60,000	
Schedule A.—Properties owned and occupied	—	5,000	
Schedule A.—Rents received under deduction of tax	—	500	
Dividends received under deduction of tax	—	3,000	68,500
<i>Annual Charges thereon.</i>			
Interest on loans (internal set-off)	—	40,000	
Rents paid under deduction of tax	—	400	40,400
Surplus of taxed income after giving effect to internal set-off	—		28,100
External set-off before earmarking for statutory appropriations of revenue	—		28,100
<i>Income statutorily earmarked.</i>			
(1) Wear and tear allowance or Sinking Fund (the greater):			
Wear and tear allowance (plant and machinery)	20,000		
Wear and tear allowance (buildings), "mills, factories, etc., deduction"	1,000		21,000 (f)
Deduct:—Total wear and tear allowance (as above) or (if greater):	21,000	49,100	
Sinking Fund	—	30,000	
Less—Profit on public supplies	4,000		
Renewals	2,000		
Obsolescence	1,000		
	7,000	23,000	23,000
			26,100
(2) Contribution (voluntarily made) to a Statutory Reserve Fund	—	3,000	23,100
(3) Limitations imposed by the operation of the Electricity (Supply) Act, 1926:			
One-twentieth of aggregate capital expenditure = £50,000.			
Reserve Fund = £51,000			
Surplus profits are therefore available to the relief of rates to the extent of $1\frac{1}{2}$ per cent. of outstanding debt.			
External set-off available to the General Rate Fund = $1\frac{1}{2}$ per cent. of £600,000			9,000
External set-off lost by operation of the Act, but available for set-off of statutory losses on other undertakings under Rule 13, Cases I. and II., Schedule D, without any consequent restriction of the general set-off position (see note (f), p. 172, post)			14,100

(f) The wear and tear allowance is added to the amount available for external set-off because it is an allowance made from profits as computed and represents profits earned by the undertaking which, although not taxable, are available for the purpose of providing for wear and tear or its equivalent of debt repayment.

IV.

Waterworks Undertaking.

<i>Taxed Income.</i>	£	£
Schedule D.—Profits - - - - -	20,000	
Schedule A.—Properties owned and occupied - - -	400	
Rents received under deduction of tax - - -	400	
Dividends received under deduction of tax - - -	2,000	
<i>Annual charges thereon.</i>		22,800
Interest on loans (internal set-off) - - - - -	30,000	
Rents paid under deduction of tax (do.) - - -	200	
Balance of interest, etc., not paid out of taxed income of the water undertaking brought to account in the set-off statement of the General Rate Fund - - -		30,200
		<u>7,400</u>

In the example shown, sufficient taxed income is available in the General Rate Fund to enable retention rights to the tax on this interest to be established.

If, however, the aggregate tax position of the authority had been one of "account"—the liability in respect of interest being in excess of the taxed income—this assessment of £7,400 or such less sum as the aggregate position of "account" might reveal, could have been scheduled as a "loss" to be carried forward for recovery against future profits of the water undertaking under sect. 19 of the Finance Act, 1928, amended by sect. 19 of the Finance Act, 1932.

V.

*General Rate Fund.**Interest, etc., Assessment and Set-off Statement.*

<i>Accountability.</i>	£	<i>Chargeability.</i>	£
(1) <i>Interest and other Annual Payments of the Fund.</i>		(1) <i>Taxed Income of the Fund.</i>	
Interest on loans paid under deduction of tax - - -	50,000	Schedule A assessments :	
Rents, etc., paid under deduction of tax - - -	400	Property owned and let	10,000
(2) <i>Waterworks Undertaking.</i>		Lease, ground and rack rent received under deduction of tax - - -	5,000
Interest liability in excess of taxed income, see above (i) - - - - -	7,400	Dividends received under deduction of tax - - -	4,000
(3) <i>Housing (Assisted Scheme), 1919.</i>		Schedule D.—Bank and other interest received, gross - - - - -	10,000
Surplus of taxed income, product of 1d. rate, available in Rate Fund (g) - - -	2,000	(2) <i>Surplus Taxed Income of Trading Undertakings (h).</i>	
(4) <i>Balance—Excess of taxed income over annual payments (g) (f) - - -</i>	3,200	Electricity, see p. 170 - - -	9,000
		Other undertakings, not exemplified - - - - -	25,000
	<u>£283,000</u>		<u>£63,000</u>

Housing (Assisted Scheme), 1919.

<i>(1) Annual Payment.</i>	£	<i>(1) Taxed Income.</i>	£
Interest on loans paid under deduction of tax - - -	40,000	Schedule A assessments, property owned and let - - -	20,000
		Dividends received under deduction of tax - - -	800
		(2) <i>Taxed Income of Rate Fund (g), available to extent of 1d. rate - - -</i>	2,000
	<u>£40,000</u>	(3) <i>Balance—Liability to account (g) for tax deductions, General Rule 21 - - -</i>	17,200
			<u>£40,000</u>

For notes, see next page.

NOTES.

(g) The figures show that the whole of the General Rate Fund interest and other payments from which tax was deducted on payment were payable out of profits or gains brought into charge. There is thus no further liability.

In the Housing (Assisted Scheme), 1919 Account there is liability to account, under General Rule 21, for tax deducted from interest on loans to an amount of £17,200. This amount cannot be reduced by the excess taxed income of £3,200 in the General Rate Fund because such income is not legally available to meet housing interest, except to the extent of 1d. rate shown; *Birmingham Corpn. v. Inland Revenue Commissioners*, [1930] A. C. 807; Digest Supp.

(h) External set-off available for payment of interest on the Rate Fund.
(i) The taxed income of this undertaking is insufficient to cover the liability to account for tax deducted on payment of interest on loans charged on the undertaking. The liability to account is therefore included in the General Rate Fund statement where it is covered by taxed income of the Rate Fund which is legally available for payment of interest on the water undertaking.

(j) Claim for relief or repayment:

Interest paid in full, £2,000 (being less than the excess of taxed income, £3,200) gives rise to claim for relief or repayment, *infra*, p. 166, under this head.
Statutory Losses, £3,000. These losses can be carried forward under sect. 33, Finance Act, 1926, or they can be set-off against profits on the electricity undertaking under Rule 13, see *ante*, p. 155. In the former event, relief is dependent upon profits in the being earned within the succeeding six years sufficient to cover the losses; in the latter case relief is obtained immediately by the Electricity Assessment being reduced to £37,000. The external set-off available in the rate fund is not affected by this restriction. [353]

INCORPORATED MUNICIPAL ELECTRICAL ASSOCIATION

This association was founded in 1896 and incorporated in 1901. It is recognised by the Electricity Commission, the Central Electricity Board and various Government departments. Over 80 per cent. of the local authorities owning electricity undertakings in the country, who are authorised undertakers under the Electricity (Supply) Acts, 1882 to 1935, are represented upon it, each being represented by two persons, one of whom is an engineer. Sect. 30 of the Electricity (Supply) Act, 1919 (a), permits authorised undertakers and joint electricity authorities, subject to the consent of the Electricity Commissioners, to pay reasonable subscriptions to any association formed for consultation as to their common interests, and to pay the reasonable expenses of representatives attending at conferences or meetings of the association. The annual convention is attended by some 1,250 delegates.

The association defends the rights and promotes the interests of municipal electrical undertakings. In particular, it undertakes independent investigations and tests of materials, methods and appliances, issuing certificates of these tests, and supports or opposes legislative measures affecting municipal electrical services.

(a) 7 Statutes 773.

The work of the association is carried out by a council of twenty-six members. The offices are at 502—505, Australia House, Strand, London, W.C.2, and the Secretary is Mr. J. W. Simpson, F.I.S.A., F.S.S. There are four local centres, the Mid-East England, the Scottish, the North-East England, and the South-East and East England. [354]

INCORPORATION

See CHARTERS OF INCORPORATION.

INDECENT ADVERTISEMENTS

See OFFENSIVE BEHAVIOUR.

INDECENT EXPOSURE

See OFFENSIVE BEHAVIOUR.

INDECENT LANGUAGE

See OFFENSIVE BEHAVIOUR.

INDECENT PRINTS

See OFFENSIVE BEHAVIOUR.

INDICTMENTS

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See also titles : ACTIONS BY AND AGAINST LOCAL AUTHORITIES ;
APPEALS TO MINISTERS ;
MANDAMUS.

Introductory.—The law relating to the form, preparation and contents of an indictment and the appropriate procedure may be found mainly in two statutes, namely the Indictments Act, 1915 (*a*), and the Administration of Justice (Miscellaneous Provisions) Act, 1933 (*b*), and in rules made under those Acts. The rules made under the Act of 1915 are contained in the First Schedule thereto, but by sect. 2 they may be varied or annulled by rules made by a rule committee with the approval of the Lord Chancellor (*c*). Rules (*d*) have also been made under sect. 2 (6) of the Act of 1933, which allows the Lord Chancellor to make rules for carrying into effect the provisions of sect. 2 of that Act as to the procedure by indictment.

An indictment is a written or printed accusation of crime, made at the suit of the Crown, charging one or more persons with the commission of an indictable offence. Formerly an indictment had to be found and presented by a grand jury at quarter sessions or assizes (*e*), but it is now sufficient if it is signed by the proper officer of the court (*f*). A bill of indictment is the formal accusation before signature. [355]

Cases to which Procedure by Indictment Applicable.—Procedure by indictment is the ordinary remedy for an indictable criminal offence. By sect. 2 (1) of the Interpretation Act, 1889 (*g*), it is provided that "In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, the expression 'person' shall, unless the contrary intention appears, include a body corporate." A contrary intention may appear either from the nature of the punishment provided by way of penalty, or from the nature of the offence itself. For example, a corporation cannot be indicted for an offence for which the only punishment is imprisonment or corporal punishment (*h*),

(*a*) 4 Statutes 709. Referred to in this title as "the Act of 1915."

(*b*) 26 Statutes 80. Referred to in this title as "the Act of 1933."

(*c*) See S.R. & O., 1916, Nos. 282, 323 ; 1923, No. 1364.

(*d*) See S.R. & O., 1933, No. 745.

(*e*) Grand juries were abolished by the Act of 1933, s. 1 (26 Statutes 80), but by the same section the indictment, when signed in accordance with the provisions of the Act by the proper officer, is to be proceeded with in the same manner as it would have been before the Act if found by a grand jury. It should be noted that by s. 2 (1) an indictment can only be preferred before a court which has jurisdiction to try the offence.

(*f*) S. 2 (1) of the 1933 Act.

(*g*) 18 Statutes 902. See *R. v. Tyler*, [1891] 2 Q. B. 588, at p. 594 ; 13 Digest 409, 1297.

(*h*) *Hawke v. Hulton, Ltd.*, [1909] 2 K. B. 98 ; 13 Digest 352, 902.

nor can a corporation be indicted for an offence involving personal violence (i). A corporation has been held incapable of committing perjury (j), but it would seem that a corporation may be indicted and fined in respect of a criminal libel published by its order (k), and a corporation may be convicted of a criminal or quasi-criminal offence, not involving a particular personal qualification on the part of the defendant (l).

An indictment will lie against a corporation for breaches of a public duty, whether imposed by statute or by common law. Thus a corporation may be indicted either for misfeasance, as where a railway company obstructed a highway in a manner not authorised by statute (m), or for nuisance, e.g. by exercising their statutory power of obstructing a highway without satisfying the statutory condition of constructing an alternative and equally convenient road instead (n). There appears to be no distinction for criminal purposes between misfeasance and non-feasance, though for civil purposes the distinction is important, for no action for damages can in general be brought against a corporation for mere non-feasance (o). [356]

It should, however, be noted that at common law (p) no criminal liability rests upon local authorities in respect of the non-repair of highways repairable by the inhabitants at large. The persons criminally responsible are the inhabitants of the parish (q), and criminal proceedings by indictment may be taken against them for failure to repair such highways, and indeed this method was adopted as recently as 1921 (r). The fine imposed must be applied towards the repairs of the highway (s), the costs are dealt with as in civil proceedings (t), and appeal lies not to the Court of Criminal Appeal but to the Court of Appeal (u). The liability of the inhabitants of the parish to do the repairs themselves has not been shifted, so as to make any other person or body of persons liable, by the Highway Act, 1835 (w), to the surveyor of highways appointed under

(i) *Pharmaceutical Society v. London and Provincial Supply Association* (1880), 5 App. Cas. 857, at p. 869; 13 Digest 408, 1286; *R. v. Cory Brothers Ltd.* (1927), 186 L. T. 735; Digest Supp.

(j) *Wych v. Meat* (1794), 3 P. Wms. 310; 24 E. R. 1078; 13 Digest 409, 1291.

(k) *Whitfield v. South Eastern Rail. Co.* (1858), E. B. & E. 115; 13 Digest 408, 1244.

(l) *Pearks, Ganson & Tee Ltd. v. Ward*, [1902] 2 K. B. 1 (13 Digest 408, 1287), at p. 8, per Lord Alverstone, C.J., commenting on *Pharmaceutical Society v. London and Provincial Supply Association*, *supra*.

(m) *R. v. Great North of England Rail. Co.* (1846), 9 Q. B. 315; 13 Digest 401, 1298.

(n) *R. v. Scott* (1842), 3 Q. B. 543; 26 Digest 445, 1626.

(o) *Coxley v. Neumarket Local Board*, [1892] A. C. 345; 26 Digest 400, 1251; but see *Gibraltar Sanitary Commissioners v. Orfila* (1890), 15 App. Cas. 400, at p. 411; 13 Digest 400, 1227.

(p) Provision is made by s. 10 of the Highways and Locomotives (Amendment) Act, 1878 (9 Statutes 170), for quasi-criminal proceedings by indictment whereby a county authority (now the county council, *vide* L.G.A., 1888, s. 3 (viii)) can enforce the performance of the duty of a defaulting highway authority; this section is seldom put into force, but may be useful where a non-county borough or U.D.C. fails to perform its highway functions; costs are dealt with under s. 10, *supra*. An indictment under this section is preferred against the highway authority and not against the inhabitants (*R. v. Wakefield Corp.* (1888), 20 Q. B. D. 810; 26 Digest 385, 1140).

(q) *Russell v. Men of Devon* (1788), 2 Term Rep. 667; 26 Digest 587, 2780.

(r) *R. v. Inhabitants of Ewell* (1921), 85 J. P. Jo. 572. In this case it appears that the inhabitants of the parish were represented by two individuals; "inhabitant" includes any person rated to the highway (now general) rate (Highway Act, 1835, s. 5; 9 Statutes 50).

(s) Highway Act, 1835, s. 96; 9 Statutes 107.

(t) Costs in Criminal Cases Act, 1908, s. 9 (3); 4 Statutes 744.

(u) Supreme Court of Judicature (Consolidation) Act, 1925, s. 29; 4 Statutes 160.

(w) S. 6 (9 Statutes 50). "The inhabitants of every parish maintaining its own highways . . . shall proceed to the election of one or more persons to serve

the Act (a), by the P.H.A., 1875 (b), to the local authority (c), nor *semble* by L.G.A., 1888 (d), to the county councils (e) though the point was not expressly decided. It is submitted that the L.G.A., 1929 (f), has not altered the situation ; and that the argument for the defendants in the case last cited (e) is conclusive.

It is immaterial that the statute creating the duty does not in terms provide that failure to perform it shall be punishable by indictment, provided the duty is of a public nature ; and in the absence of a specific statutory provision, the existence of a statutory remedy does not abolish the common law remedy, which continues to exist. The failure of a public authority to perform a statutory duty other than the repair of a highway (g) is usually more conveniently dealt with by *mandamus* or injunction ; but proceedings by indictment may occasionally afford a local authority a useful means of vindicating the rights of the public.

Sect. 33 of the Criminal Justice Act, 1925 (h), provides machinery for proceeding against a corporation by indictment, and *semble* proceedings by indictment should similarly be instituted by information laid by an individual duly authorised by the corporation in that behalf. Where a sanitary authority are the prosecutor, however, proceedings by indictment to protect a watercourse from pollution arising from sewage may only be taken with the consent of the Attorney-General (i).

Inspection of corporation books, etc., is not enforced in criminal proceedings against a corporation, where it would have the effect of making a corporation incriminate itself, but, *semble*, this rule does not apply to an indictment on which a civil right is in issue (k). [357]

Form of Indictment.—A bill of indictment is written or printed (or partly written and partly printed) on parchment or durable paper, the sheets (if more than one) being fastened together in book form (l).

The bill consists of (1) the commencement, (2) the statement of the offence, and (3) the particulars of the offence as follows :

The King v. A.B.

Surrey Quarter Sessions,
held at Kingston.

A.B. is charged with the following offence :

STATEMENT OF OFFENCE.

Larceny, contrary to sect. 2 of the Larceny Act, 1916.

PARTICULARS OF OFFENCE.

A.B., on the 1st day of June, 1917, at Kingston in the county of Surrey, stole a bag, the property of C.D.

the office of surveyor in the said parish . . . (who) shall repair and keep in repair the several highways in the said parish."

(a) *Young v. Davis* (1863), 2 H. & C. 197 ; 26 Digest 398, 1241.

(b) S. 144 (19 Statutes 583). "Every urban authority shall within their district . . . execute the office of and be surveyor of highways and have . . . all the powers, authorities, duties and liabilities of surveyor of highways."

(c) *R. v. Poole Corpn.* (1887), 19 Q. B. D. 602 ; 26 Digest 376, 1015.

(d) S. 11 (10 Statutes 603). "Every road in a county, which is for the time being a main road . . . shall after the appointed day be wholly maintained and repaired by the council of the county in which the road is situate."

(e) *A.-G. v. Staffordshire County Council*, [1905] 1 Ch. 336 ; 26 Digest 353, 797.

(f) Ss. 29, 30, 31 (10 Statutes 903).

(g) *A.-G. v. Staffordshire County Council*, [1905] 1 Ch. 336 ; 26 Digest 353, 797.

(h) 11 Statutes 415.

(i) *P.H.A.*, 1875, s. 69 ; 13 Statutes 654.

(k) *Cf. Spokes v. Grosvenor Hotel Co.*, [1897] 2 Q. B. 124 ; 18 Digest 48, 60.

(l) Act of 1915, Sched. I., r. 1 ; 4 Statutes 802. At assizes and many quarter sessions it is the practice to furnish the judge or chairman with an abstract of the indictment on a form of convenient size.

As will be seen, the commencement is headed with the words *The King v. A.B.* (defendant's name), and sets out the court of trial by title and description. The statement of offence follows, as to which sect. 3 of the Act of 1915 provides that it shall contain, and shall be sufficient if it does contain, a statement of the specific offence or offences with which the defendant is charged. In the case of a statutory offence, a reference to the section of the statute creating the offence must be included under rule 4 (3) of the First Schedule to the Act of 1915; by sect. 3 (1), the particulars of the offence must be such as are necessary for giving reasonable information as to the nature of the charge. Forms of statement and particulars are contained in the First Schedule to the Act of 1915 and the Indictments Rules, 1916 (*m*), but the list is not exhaustive. Each offence charged in the indictment must be set out in a separate paragraph, termed a count; and each count, which must be numbered consecutively, includes a statement of the offence charged by that count, and particulars thereof (*n*). [358]

Since the virtual abolition of grand juries by sect. 1 of the Act of 1933, an indictment does not contain a presentment of the grand jury. Despite the simplification of indictments effected by recent legislation it is essential that the document should disclose an offence, and should contain such particulars as will enable the defendant to know what charge he has to meet, and to inform the jury of the charge they have to try (*o*). The preparation of an indictment is simplified by rule 5 of the First Schedule to the Act of 1915. The gist of the rule is that if the statute creating the offence states an offence in an alternative form, the offence may be stated alternatively in the count charging the offence. Moreover, when the statute creating the offence contains exceptions, exemptions or qualifications, which prevent an offence arising, these need not be negatived in the statement in a count charging the commission of the offence. Subject to the foregoing, each count of the indictment should be self-contained and should fully inform the defendant of the charge made against him.

As to venue, reference should be made to the Counties of Cities Act, 1793 (*p*); and to the Municipal Corporations Act, 1882, sect. 138 (*q*), as to trial of offenders at assizes held for counties adjoining counties of cities for which no separate assizes are held; and to the Criminal Justice Act, 1925, sects. 11, 14 (*r*), as to trial in a place other than that in which the offence was committed. [359]

Joining of Charges in One Indictment.—Sect. 4 of the Act of 1915 provides that charges for more than one felony or for more than one misdemeanour, or for combinations of felonies or misdemeanours, may be joined in the same indictment, but this is subject to rule 3 in the First Schedule to the Act of 1915 (*s*), which limits the joining of charges to those founded on the same facts, or which constitute or form part of a series of offences of the same or a similar character. If more than

(*m*) S.R. & O., 1916, No. 282.

(*n*) Act of 1915, Sched. I., r. 4; 4 Statutes 803.

(*o*) *Cf. R. v. Hyde* (1934), 98 J. P. 213; Digest (Supp.), where a conviction was quashed by the C.C.A. owing to the omission of material words from the particulars of a statutory offence.

(*p*) 4 Statutes 307.

(*q*) 10 Statutes 636.

(*r*) 11 Statutes 401, 406.

(*s*) If felony and misdemeanour are included in one indictment, the jurors' oaths and the challenging of jurors are on the same footing as if all the counts were for felony; *ibid.*, s. 4.

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one offence is charged in the same indictment, the court may, before or at any stage of the trial, order a separate trial of any count or counts, if they are of opinion that a simultaneous trial of all the counts is likely to embarrass or prejudice the defendant in his defence, or that for any other reason separate trials are desirable; Act of 1915, sect. 5 (3) (t). [360]

Joining of Defendants in One Indictment.—Defendants who join in the commission of one offence, principals in the first and second degree, or accessories before or after the fact, may be charged either separately or jointly in one indictment. Defendants may be indicted jointly, though they may have acted separately (u); but the defendants included in the same indictment must be connected in relation to the same offence, and cannot be indicted together in respect of similar offences alleged to have been independently committed.

There appears to be nothing to prevent a corporation being joined with an individual in one indictment; indeed, such joinder is expressly contemplated by the Criminal Justice Act, 1925, sect. 33 (a).

Reference may be made to the Larceny Act, 1916, sect. 40 (3) (b), for provisions respecting charges against different persons of receiving the same stolen property at different times. [361]

Preferment of Bill of Indictment.—The procedure governing the preferment of a bill of indictment will be found in sect. 2 of the Act of 1933 and in the Indictments (Procedure) Rules, 1933 (c). Subject to the provisions of sect. 2 of that Act, an indictment may be preferred by any person before a court in which the person charged may lawfully be indicted for the offence set out in the bill, but the person charged must either have been committed for trial for the offence, or the bill must be preferred by the direction or with the consent of a judge of the High Court, or pursuant to an order made under sect. 9 of the Perjury Act, 1911 (d).

Where a person has been committed for trial, the bill of indictment may include any offence disclosed by the depositions being counts which may lawfully be joined in the same indictment, either in substitution for, or in addition to the charges for which the defendant was committed; and, following on a committal, direction or consent, charges of a previous conviction, or of being a habitual criminal, or a habitual drunkard may be included (e). The proper officer of the court (f) is to sign the bill when he is satisfied that the conditions laid down in sect. 2 (2) of the Act of 1933 have been complied with, and the bill thereupon becomes an indictment; the judge or chairman of the court may on the application of the prosecutor, or of his own motion, direct the proper officer to sign the bill (sect. 2 (1)).

Under the Indictments (Procedure) Rules, 1933, a bill is preferred

(t) 4 Statutes 800. Whilst the C.C.A. have repeatedly stressed the importance of saving expense and time by the proper use of the powers contained in s. 4 of the Act of 1915, care must always be taken that the defendant is not thereby prejudiced.

(u) *R. v. Trafford* (1831), 1 B. & Ad. 874; 14 Digest 224, 2032.

(a) 11 Statutes 415.

(b) 4 Statutes 835.

(c) S.R. & O., 1933, No. 745.

(d) 4 Statutes 776. This section empowers various judicial officers to order prosecutions for perjury and to commit for trial.

(e) Act of 1933, proviso to s. 2 (2).

(f) The clerk of assize or the clerk of the peace, or such officer as may be prescribed by rules made under s. 2 of the Act of 1933 (26 Statutes 81). The "proper officer" includes deputies appointed pursuant to statute (r. 9 of Rules of 1933).

by presenting it to the proper officer of the court, but if, with the assent of the prosecutor, the bill is prepared by the proper officer of the court, it is deemed to have been duly preferred as soon as it has been settled to the satisfaction of that officer (rule 1). No bill may be preferred after the first working day (not the commission day at assizes) of assizes or quarter sessions, except with the leave of the judge or chairman (rule 2). [362]

Where no person has been committed for trial, a prosecutor proposing to present a bill must give notice to the clerk of assize or clerk of the peace, as the case may be, of his intention so to do, more than five days before the commission day at assizes, or before the opening day of quarter sessions (*g*). The procedure on an application for consent to the preferment of a bill of indictment is set out in rules 3 to 7; the application may be made either to the judge of assize or to the judge acting as judge in chambers in the King's Bench Division. Applications for consent to prefer a bill at quarter sessions are made to a judge or commissioner of assize, and not to the chairman of quarter sessions. The application must be in writing, signed by the applicant or by his solicitor, and may be sent by post to the judge or delivered to his clerk; the application must state whether any previous application has been made, and whether any proceedings have been taken under the Indictable Offences Act, 1848 (*h*), and the result of any such application or proceedings. Reference should be made to the rules for details of the documents which should accompany the application; the object of the rules is to ensure that the applicant can and will produce evidence which he believes to be true in support of the charges set out in the proposed indictment.

It should be observed, in considering proceedings by indictment against a corporation, that under sect. 33 of the Criminal Justice Act, 1925 (*i*), a corporation charged before examining justices with an indictable offence is not committed for trial, but an order is made empowering the prosecutor to prefer a bill at the assizes or quarter sessions named in the order, and the order is deemed to be a committal for trial (*k*). On arraignment before the court of assize or quarter sessions, a corporation may enter a plea in writing of guilty or not guilty through its representative, and if it does not plead, or appear by a representative, the court must order a plea of not guilty to be entered, and the trial proceeds accordingly (*l*). When a corporation is charged with an offence in respect of which an individual would be entitled under sect. 17 of the Summary Jurisdiction Act, 1879 (*m*),

(*g*) Assizes and Quarter Sessions Act, 1908, s. 1 (5), and Supreme Court of Judicature (Consolidation) Act, 1925, s. 78 (5) (4 Statutes 170). References to the grand jury in the foregoing statutes are repealed by the Act of 1933; 26 Statutes 86, 87.

(*h*) 4 Statutes 481.

(*i*) 11 Statutes 415.

(*k*) *Scmble*, in the rare cases where it is desired to prefer an indictment against a local authority, it would be more convenient to proceed by way of an application for consent to the preferment of a bill, instead of proceeding under s. 33 of the Act of 1925.

(*l*) The representative need not be appointed under seal; a statement in writing purporting to be signed by a person having the management of the affairs of the corporation, that the person named in the statement has been appointed as representative is *prima facie* evidence of the appointment (Act of 1925, s. 33 (6)). The representative can only do what the statute empowers him to do, and should not be allowed to act as an advocate unless legally entitled to do so.

(*m*) 11 Statutes 329.

to claim to be tried by a jury, the corporation may appear by representative and claim accordingly; but in the absence of such a claim the case may be dealt with summarily as if the case were one to which the section did not apply (*mm*).

Rule 11 of the Indictable Offences Rules, 1926 (*n*), prescribes the method of serving documents on a corporation.

Sect. 33 of the Act of 1925 does not effect more than changes in procedure, and therefore does not render a corporation liable to be indicted where previously no statutory or common law offence would have been committed by the corporation (*o*). [363]

Amendment of Indictment.—Sect. 5 of the Act of 1915 (*p*) gives wide powers of amending an indictment. Before trial or at any stage of a trial, if it appears to the court that an indictment is defective, they must make such order for the amendment of the indictment as they think necessary to meet the circumstances of the case, unless the required amendment cannot be made without injustice. A note of the order for amendment is endorsed on the indictment, which then has effect as if it had been signed in the amended form (sect. 5 (2)). The court may postpone a trial after amendment of the indictment (sect. 5 (4)), and if the order for postponement is made during the trial, the jury may be discharged from giving a verdict on the postponed counts, and in that case the postponed trial is conducted as though the trial had not commenced (*q*) (sect. 5 (5)). The court have a discretion as to costs, bail, and as to the enlargement of recognisances (*ibid.*).

The power of amendment is not unlimited. An amendment to an indictment for false pretences which involved the allegation of a new false pretence has been held to be beyond the scope of the Act of 1915 (*r*). The overriding consideration is that it must be possible to make the amendment without injustice. [364]

Quashing (*s*).—At common law the court may, in their discretion, quash an indictment which is bad on the face of it, or is so insufficient as to be inadequate to justify any judgment given thereon. Thus an indictment which does not charge the defendant with an indictable offence, or which wrongly joins several defendants in the same indictment, or which (in the case of an indictment for libel) omits necessary innuendos, may be quashed. The quashing of indictments must now, however, be considered in the light of the powers of amendment and of ordering separate trials contained in sect. 5 of the Act of 1915.

Sect. 2 (3) of the Act of 1933 (*t*) renders liable to be quashed an indictment signed by the proper officer where the bill has been preferred otherwise than in compliance with sub-sect. (2) of the section, but in

(*mm*) Act of 1925, s. 33 (5); 11 Statutes 416.

(*n*) S.R. & O., 1926, No. 676.

(*o*) *R. v. Cory Bros. & Co., Ltd.*, [1927] 1 K. B. 810; Digest (Supp.).

(*p*) 4 Statutes 800.

(*q*) *I.e.* the defendant is again arraigned and required to plead, and is given in charge to a new jury.

(*r*) *R. v. Errington* (1922), 16 Cr. App. R. 148 (14 Digest 234, 2201). See also *R. v. Hughes* (1927), 91 J. P. 89 (Digest (Supp.)), in which Lord Hewart, L.C.J., at 91 J. P., p. 40, drew a distinction between the mere curing of a defect in the indictment and the revision and alteration of the substance of the charge.

(*s*) For a full dissertation on this question, *vide* Archbold: Criminal Pleading, Evidence and Practice (29th ed.) at pp. 83—86.

(*t*) 26 Statutes 82.

such case, if the defendant had been committed for trial and was convicted, the indictment cannot be quashed under sect. 2 (8) on appeal, unless application was made at the trial that it should be so quashed (sect. 2 (8), proviso); but, if the bill was preferred by the direction or with the consent of a judge, or pursuant to an order under sect. 9 of the Perjury Act, 1911, apparently it may be quashed on appeal, although no application to quash was made at the trial.

A court of quarter sessions can quash an indictment preferred and signed there, before a plea is taken (*u*); otherwise, the record must be removed to the King's Bench Division of the High Court by certiorari, and application made there.

In the case of an indictment for failure to repair highways or bridges, or for a public nuisance, the practice of the court appears to be to refuse to quash the indictment except on certificate that the cause of complaint has been remedied. [365]

(*u*) *R. v. Wilson* (1844), 6 Q. B. 620; 14 Digest 252, 2482.

INDOOR RELIEF

See INSTITUTIONAL RELIEF.

INDUSTRIAL HEREDITAMENTS

See DERATING.

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See APPROVED SCHOOLS.

INEBRIATES, INSTITUTIONS FOR

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See also title: LICENSED HOUSES AND HOSPITALS.

Introduction.—This article deals with the detention, care and reformation of the inebriate, so far as those duties fall within the sphere of local government. For the law as to insanity caused by drunkenness, see the title LICENSED HOUSES AND HOSPITALS, and as to the sale of intoxicants generally, see the title INTOXICATING LIQUOR. By the Habitual Drunkards Act, 1879 (a), Parliament first legalised and regulated the detention of consenting habitual drunkards in retreats. These were to be maintained by private persons but licensed by the local authority, and inspected by the Home Secretary, but it is believed that less than five of these retreats are now in existence in England and Wales. This Act was originally passed as an experiment for ten years, but was by the Inebriates Act, 1888 (b), made permanent. Later, by the Inebriates Act, 1898 (c), a system of reformatories to which convicted inebriates might be committed was authorised, to be provided either by private bodies, local authorities or the State, but no such reformatory seems to be maintained in England and Wales, at all events by a local authority or the State. This Act was amended by the Inebriates Act, 1899 (d) (with which the earlier Acts may be cited collectively as the Inebriates Acts, 1879 to 1899), and the Licensing Act, 1902 (d). [866]

Meaning of "Habitual Drunkard."—There is no definition of "inebriate" in the Acts, but "habitual drunkard" is defined in sect. 3 of the Act of 1879 (e), as meaning "a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or herself, or to others, or incapable of managing himself or herself, and his or her affairs." In regard to the protection for the wife or husband of an habitual drunkard under sect. 5 of the Licensing Act, 1902 (f), the definition has been extended by sect. 3 of the Summary Jurisdiction (Separation and Maintenance) Act, 1925 (g), to include "a

(a) 9 Statutes 945.

(c) *Ibid.*, 955.

(e) *Ibid.*, 945.

(g) 9 Statutes 415.

(b) *Ibid.*, 954.

(d) *Ibid.*, 963.

(f) See *post*, p. 184.

reference to the habitual taking or using, except upon medical advice, of opium or other dangerous drugs within the meaning of the Dangerous Drugs Acts, 1920 and 1928" (h). The definition in sect. 3 of the Act of 1879 has been discussed in several cases. In *Robson v. Robson* (i), it was considered that whether drunkenness was habitual or merely occasional was a question of fact. In *Eaton v. Best* (k), it was held that the definition applied to a person who habitually drinks to excess, and who is, when drunk, dangerous or incapable of managing himself or his affairs, even though when sober he was not so incapable, but in *Taylor v. Taylor* (l), that the justices must be satisfied before finding that a person is an habitual drunkard that he is (1) dangerous at times to himself and others, or (2) is incapable of managing himself and his affairs, and it is necessary to prove that though a person may be excessively intemperate and violent at times, the acts of violence were brought about by reason of the intemperance. [367]

Retreats.—A retreat is defined in sect. 3 of the Act of 1879 (m) as a house licensed by the licensing authority for the reception, control, care and curative treatment of habitual drunkards. The local authority (n) may contribute such sums and on such conditions as they think fit, towards the establishment or maintenance of a retreat, and any two or more councils may combine for any such purpose (o). The local authority may also, subject to any condition they think fit, license any person for a period not exceeding two years, to keep a retreat (p). One at least of the persons licensed must reside in the retreat, and if he is not a medical man, a doctor must be employed as medical attendant (*ibid.*). A licence must not be given to any person who is licensed to keep a house for the reception of lunatics, and a retreat must be managed in accordance with the regulations of the Home Secretary, and is subject to inspection by an inspector or assistant inspector appointed by the Home Secretary (q). An order to visit and examine a person detained in a retreat may be made by a judge of the High Court, or a county court judge, who may also order the discharge of the person detained (r). Fines may be imposed under sects. 17, 23, 24, 28 of the Act of 1879, or imprisonment awarded, if a licensee does not comply with or contravenes the Act or the rules, or neglects an inmate; and if any officer or servant ill-treats an inmate, or in the case of an offence mentioned in sect. 24. Patients themselves may be liable to a fine not exceeding £5 or imprisonment not exceeding seven days for a wilful neglect of, or refusal to conform with, the rules (s). [368]

(h) 11 Statutes 756, 773.

(i) (1904), 68 J. P. 416; 30 Digest 111, 805.

(j) [1900] 1 K. B. 632; 30 Digest 111, 808.

(k) [1912], 50 Sol. Jo. 572; 30 Digest 111, 807.

(l) 9 Statutes 945.

(m) The local authority under the Inebriates Acts, 1879 to 1898, is, in a borough, the borough council, and elsewhere the county council; see s. 13 of the Act of 1898 (9 Statutes 959).

(n) Act of 1898, s. 14; 9 Statutes 960.

(o) Act of 1879, s. 6; printed as amended by s. 15 of the Act of 1898 at 9 Statutes 946.

(p) *Ibid.*, ss. 7, 15, 17; consolidated regulations were made in 1907 (S.R. & O., 1907, No. 198).

(q) *Ibid.*, s. 18. By an *ex parte* application in chambers, S.C. Ord. 54, and in the case of a county court judge as set out in rule 12, Ord. 50 of the County Court Rules.

(s) *Ibid.*, s. 25; 9 Statutes 952.

A local authority may transfer a licence, if the licensee becomes incapable or dies or becomes bankrupt, and if any retreat becomes unfit for the habitation of the patients the local authority or the inspector of retreats may order their discharge (*t*). Licences must bear a stamp of £5, and 10s. for every intended patient above ten, and all expenses incurred by the local authority in the grant, renewal or transfer of a licence must be borne by the applicant (*u*). [369]

An habitual drunkard who desires to be admitted to a retreat must make an application in a form prescribed by the rules, stating the time during which he undertakes to remain in the retreat (*a*). This must be accompanied by a statutory declaration that he is an habitual drunkard signed by two persons, and his signature must be attested by two justices, who have explained to him the effect of his application. The time must not exceed two years and, unless discharged or authorised by licence, he must not leave before the expiration of that time. Every licensee must, within two clear days after the reception of a person, send a copy of the application to the clerk of the local authority and to the Home Secretary (*b*). Any patient may be discharged, if it appear reasonable and proper, by a justice upon the request of a licensee (*c*), and sects. 19 to 22 contain provisions as to leave of absence from a retreat. See also sect. 19 of the Act of 1898 as to the procedure on the death of a patient on leave of absence. [370]

A person may be detained in a retreat longer than the period signified on his admission, or may be readmitted by means of a further application, and in these cases it is not necessary for a statutory declaration to be made or for the attesting justice to satisfy himself that the applicant is an habitual drunkard (*d*). Where a patient dies in a retreat, the medical attendant must sign a statement of the cause of death, under sect. 27 of the Act of 1879, and the licensee must send a copy of it to the coroner, the registrar of deaths, the clerk of the local authority and to the person making the last payment for the deceased or one of the persons who signed the statutory declaration on his admittance. By the proviso to sect. 5 (2) of the Licensing Act, 1902 (*e*), where a man asks for a separation from his wife on the ground that she is an habitual drunkard, the court, instead of making such an order, may, with her consent, order her to be detained in any retreat, the licensee of which is willing to receive her. By proviso (j) to sect. 93 (1) of the Poor Law Act, 1930 (*f*), a period of detention in a retreat under the Act of 1879 does not interrupt the residence necessary for a status of irremovability by one year's residence, and the period of detention is to be excluded. [371]

Under sect. 26 of the Children Act, 1908 (*g*), an habitual drunkard might, if he or she so desired, be committed to a retreat, but this section was repealed by sect. 74 of the Children and Young Persons Act, 1932 (*h*), and has not been re-enacted. [372]

Detention in Certified Reformatory.—By sect. 1 of the Inebriates Act, 1898 (*i*), where a person is convicted on indictment of an offence

(*t*) Act of 1879, ss. 8, 9; 9 Statutes 947.

(*u*) *Ibid.*, s. 14.

(*a*) *Ibid.*, s. 10, printed as amended by s. 16 of the Act of 1898 at 9 Statutes 947.

(*b*) *Ibid.*, s. 11.

(*c*) *Ibid.*, s. 12.

(*d*) Act of 1898, s. 17; 9 Statutes 900.

(*e*) 9 Statutes 965.

(*f*) 12 Statutes 1016.

(*g*) 9 Statutes 809.

(*h*) 25 Statutes 256.

(*i*) 9 Statutes 955.

punishable with imprisonment or penal servitude, if the court is satisfied that the offence was committed under the influence of drink or that drunkenness was a contributing cause of the offence, and the offender admits or is found by the jury to be an habitual drunkard, the court may, in addition to or in substitution for any other sentence, order him to be detained for not more than three years in a State or certified reformatory. Certain offences are also set out in the First Schedule to the Act (*k*) and include generally those of being drunk in various public places or vehicles, and by sect. 2 of the Licensing Act, 1902 (*l*), the offence of being drunk in any highway or public place or on licensed premises while in charge of a child is added to the list. By sect. 2 of the Act of 1898 (*m*), if a person commits any of the offences in the list above-mentioned and has within the preceding twelve months been convicted summarily at least three times of any of the offences, and is an habitual drunkard, he is liable on indictment, or if he consents to be dealt with summarily on summary conviction, to be detained in a certified reformatory for not more than three years. A sentence of imprisonment with hard labour cannot be inflicted on a person convicted on indictment in addition to detention under the Act (*n*).

The Act of 1898 contemplated that inebriate reformatories would be established by the State, and by county and borough councils and private persons, but no State reformatory seems to exist in England and Wales, nor have a county or borough council in England and Wales provided a reformatory, and it is doubtful whether one provided by private persons exists. It follows that advantage cannot in practice be taken of the provisions to which allusion has been made. [373]

Establishment of Certified Reformatories.—The provisions relating to this matter are in sects. 5 to 12 of the Inebriates Act, 1898 (*o*), but as no such reformatory is believed to exist in England and Wales, it seems unnecessary to set out these provisions. The Act contains no express power to acquire land for the purpose, but sects. 157, 158 of L.G.A., 1933 (*p*), could be utilised by a county or borough council, who would also borrow for the establishment of a reformatory, or for the payment of contributions, under sect. 195 of that Act (*q*), supplemented as respects borough councils by sect. 9 (2) of the Inebriates Act, 1898 (*r*), indicating that contributions may be borrowed, though sect. 106 of the Municipal Corporations Act, 1882 (*s*), referred to in that sub-section is repealed by L.G.A., 1933. [374]

Regulations as to certified inebriate reformatories have, however, been made by the Home Secretary under sect. 6 of the Act of 1898 (*t*).

Periods of detention in or absence under licence from a certified or a State inebriate reformatory do not interrupt residence for the acquisition of a status of irremovability (*u*). By sect. 103 (7) of the Poor Law

(*k*) 9 Statutes 962.

(*l*) *Ibid.*, 964.

(*m*) *Ibid.*, 956.

(*n*) *R. v. Briggs*, [1909] 1 K. B. 381; 30 Digest 112, 814.

(*o*) 9 Statutes 957—959.

(*p*) 26 Statutes 391, 392.

(*q*) *Ibid.*, 412.

(*r*) 9 Statutes 958.

(*s*) 10 Statutes 608.

(*t*) 9 Statutes 957. General model regulations were made on December 17, 1898, but were not published as S.R. & O. For later regulations, see S.R. & O., 1904, Vol. VI., p. 51 (transfer of persons from a State to a certified inebriate reformatory and *vice versa*); S.R. & O., Rev. 1904, Vol. I., p. 100 (absence on leave of inmates); and S.R. & O., 1906, No. 75, p. 296 (photographing of inmates).

(*u*) Poor Law Act, 1930, s. 93 (1) (*j*) (12 Statutes 1010). See also *ante*, p. 184.

Act, 1930 (a), if a justice considers that a person on release from an inebriate reformatory will require immediate poor law relief, he can make an order for him to be removed direct to a workhouse. Under sect. 52 (1) (c) of the same Act (b), the child of a person detained under the Inebriates Act, 1898, may be adopted by the poor law authority. [375]

State Reformatories.—These were to be established and maintained by the Home Secretary (c), who was authorised, with the approval of the Treasury, to acquire land or buildings. The expenses were to be paid from Government funds, subject, however, to the right to recover them under sect. 12 of the Act of 1898 (d), where an inebriate had property. By sect. 4 of the Act (e), the Home Secretary could make regulations as to State inebriate reformatories (f), and subject to adaptations the Prison Acts are to apply except that no corporal punishment may be inflicted in a State inebriate reformatory. [376]

London.—The public general law on this subject is the same in London as elsewhere. The L.C.C. are the local authority, and there are no special London provisions. [377]

(a) 12 Statutes 1026.

(c) Inebriates Act, 1898, s. 3; 9 Statutes 956.

(e) 9 Statutes 957.

(f) See S.R. & O., Rev. 1904, pp. 30, 51, 260, 261.

(b) *Ibid.*, 994.

(d) 9 Statutes 959.

INFANT LIFE PROTECTION

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MATERNITY AND CHILD WELFARE ;
NURSING HOMES.

Preliminary.—The law is contained in Part I. of the Children Act, 1908 (a), as amended by Part V. of and the Second Schedule to the Children and Young Persons Act, 1932 (b). These provisions have not been included in the Consolidation Act, the Children and Young Persons Act, 1933, and remain outstanding.

The supervision of the administration of Part I. of the Children Act, 1908, was transferred from the Secretary of State to the Minister of Health by sect. 3 (1) of the Ministry of Health Act, 1919 (c).

(a) 9 Statutes 795.

(b) 25 Statutes 252, 270.

(c) 3 Statutes 417.

Certain powers and duties are entrusted to the local authority, which under sect. 10 of the Act of 1908 (*d*) was, outside London, the boards of guardians, but by sect. 2 of the L.G.A., 1929 (*e*), their functions in relation to infant life protection are now to be discharged by county councils and county borough councils as functions under the Maternity and Child Welfare Act, 1918 (*f*), except that where a non-county borough or district council have established a maternity and child welfare committee the functions are to be discharged by that council instead of by the county council.

Expenses incurred in connection with these functions are defrayed by a county council out of the county fund under sect. 181 of L.G.A., 1933, and by a borough or district council out of the general rate fund under sects. 185, 188 of that Act (*g*). [378]

Local authorities may combine for the purpose of executing infant life protection functions and for defraying the expenses (*h*).

Duties of Local Authority.—By sect. 2 (1) of the Children Act, 1908 (*i*), it is the duty of the local authority to provide for the execution of Part I. of that Act within their area, and to make inquiry from time to time whether there are residing therein persons who undertake to nurse children in such circumstances as to bring them within the provisions of the Act as to notices.

If any such persons are found, the local authority must appoint one or more infant protection visitors. In addition to or instead of making such appointments, the authority may authorise in writing one or more suitable persons to exercise the powers of infant protection visitors, on specified terms and conditions. If in the area of the authority infants have been placed out to nurse by a philanthropic society, the society may be authorised to exercise these powers in respect of those infants, provided that the local authority are satisfied that the infants' interests are properly safeguarded and that periodical reports are sent to them (*k*). Where one person only is appointed or authorised, that person must be a woman, and where there are two or more, at least one must be a woman. [379]

The infant life protection visitors or authorised persons are charged with the duty of making periodical visits to any infants in respect of whom notice is required to be given, and to visit the premises where they are kept, so as to satisfy themselves as to their health and well being, and to give any necessary advice or directions concerning the care of their health and their maintenance (*l*). If, however, the local authority are satisfied that particular premises are so conducted that it is unnecessary that they should be visited, the local authority may grant exemption, either unconditionally or subject to conditions (*l*). A refusal by a foster-parent to allow a visitor or authorised person to visit or examine infants or premises in which they are kept is made an offence under Part I. of the Act (*m*). Further, if admittance is refused, or if the visitor or authorised person has reason to believe that infants under nine years of age are kept in premises in contravention of Part I. of the Act of 1908, a warrant may be obtained from a justice of the

(*d*) 9 Statutes 799.

(*f*) 11 Statutes 742.

(*h*) Children Act, 1908, s. 2 (3); 9 Statutes 796.

(*i*) 9 Statutes 796.

(*k*) Children Act, 1908, s. 2 (2) (9 Statutes 796), as amended by Sched. II. to Act of 1932 (25 Statutes 270).

(*l*) *Ibid.*, s. 2 (4).

(*e*) 10 Statutes 883.

(*g*) 26 Statutes 405, 407, 408.

(*m*) *Ibid.*, s. 2 (5).

peace, authorising the visitor or other person to enter the premises to see whether an offence has been committed (*n*). If the occupier or any other person obstructs any person in the execution of the warrant, or causes or procures such obstruction, he is guilty of an offence under Part I. of the Act (*n*). [380]

Notices as to Nurse Children.—Foster-parents who undertake for reward the nursing and maintenance of one or more infants under the age of nine years, apart from its parents or having no parents, are under certain obligations by the provisions in sect. 65 (8) of the Act of 1932, which are substituted for sect. 1 (1) to (3) of the Act of 1908. There is an undertaking for reward if there is any payment or gift of money or money's worth, or any promise to pay or give money or money's worth irrespective of any question of making profit.

Such persons must give written notice to the local authority in respect of every infant received. The notice may be sent by registered post addressed to the local authority or their clerk at their offices or to some other duly authorised officer of the local authority (*o*).

By the new sect. 1 (1) of the Act of 1908, notice must be given : (1) in the case of the first infant proposed to be received for reward in the dwelling occupied or proposed to be occupied for the purpose, the infant being not already in the foster-parent's care, not less than seven days before the infant is received ; (2) in the case of any other infant not already in the foster-parent's care, not less than forty-eight hours before the receipt of the infant ; and (3) in the case of an infant already in the foster-parent's care without reward, within forty-eight hours after an undertaking for reward has been entered into. Failure to give notice within the specified time will not be punishable, however, if the defendant proves that the infant was received upon an emergency and that he gave notice within twelve hours thereafter. [381]

The notice must give the following particulars : name and sex of the infant, date and place of birth, name of person undertaking nursing and maintenance, dwelling, where it is, or is to be, kept, and name of person from whom it is to be, or was, received (*p*).

For the purposes of Part I. of the Children Act, 1908, any reference to an infant in respect of whom notice is required to be given includes a child under nine years of age in respect of whom a notice has been given, if he is still living with the person who gave the notice and is not with his parents (*q*). [382]

Except in cases of emergency, written notice must be given by a foster-parent to the local authority at least seven days before he changes his residence ; and if he is moving into the area of another local authority he must give written notice at least seven days before he changes his residence, also to the new local authority in respect of every infant coming within sect. 1. In case of emergency and an immediate change of residence, the notice may be given within forty-eight hours after the change (*r*).

If an infant dies, or is removed from the care of the foster-parent, the foster-parent must give notice within twenty-four hours to the local

(*n*) Children Act, 1908, s. 2 (6), as amended by Sched. II. to Act of 1932 (25 Statutes 271). This sub-section does not expressly authorise the use of force or the execution of the warrant by night.

(*o*) *Ibid.*, new s. 8 (2) (25 Statutes 271).

(*p*) *Ibid.*, new s. 1 (2) ; 25 Statutes 252.

(*q*) *Ibid.*, new s. 1 (3).

(*r*) *Ibid.*, s. 1 (4) (9 Statutes 795), as amended by Sched. II. to Act of 1932.

authority and to the person from whom the infant was received (*s*). In case of removal the notice must state the name and address of the person to whose care the infant has been transferred (*s*). In case of death, written notice must also be given within twenty-four hours of the death, to the coroner of the district in which the body lies, so that the coroner may decide whether or not an inquest should be held (*t*). This notice may be sent by registered post addressed to the coroner at his office or his residence (*a*).

Any person failing to give a notice before the latest time specified for giving it, is guilty of an offence under Part I. of the Act of 1908 (*b*).

When a person under an obligation to give notice in respect of the receipt of an infant for reward under sect. 1 of the Children Act, 1908, fails to give notice before the latest time specified, and the consideration for the nursing and maintenance of the infant in question consisted in whole or in part of a lump sum, the person so failing may be ordered to forfeit that sum or a less sum, in addition to any other penalty (*b*). The sum so forfeited is to be applied for the benefit of the infant in such manner as the court may direct, and their order is enforceable as if it were an order on complaint (*b*), that is, by distress or imprisonment. An offence of failure to give notice is deemed to continue as long as the infant in question remains in the care of the offender (*b*). [383]

Persons Prohibited from Receiving Children for Reward.—By sect. 3 of the Act of 1908, the following classes of persons are prohibited from keeping, for reward, infants in respect of whom notice is required as above-mentioned, unless the local authority gives written permission, namely: (i.) persons from whose care an infant has been removed under Part I. of the Children Act, 1908, or the Infant Life Protection Act, 1897 (*c*); (ii.) persons who have been convicted of any offence under Part II. of the Children Act, 1908 (*d*), or of any offence of cruelty under the Prevention of Cruelty to Children Act, 1904 (*e*).

Sect. 3 of the Act of 1908 also prohibits an infant, without such permission, being kept in any premises from which any infant has been removed under Part I. of the Children Act, 1908, by reason of the premises being dangerous or insanitary, or under the Infant Life Protection Act, 1897 (*f*), by reason of the premises being so unfit as to endanger its health.

Keeping, or causing to be kept, any infant in contravention of these provisions is an offence under Part I. of the Act of 1908 (*g*). [384]

Prevention of Overcrowding.—Under sect. 66 of the Act of 1932 (*h*), if in any dwelling there is any infant in respect of whom notice is required to be given under Part I. of the Children Act, 1908, the local authority may fix the maximum number of infants under nine years of age who may be kept there and may also, if they think fit, impose

(*s*) Children Act, 1908, s. 1 (5), as amended by s. 65 (2) and Sched. II. to Act of 1932.

(*t*) *Ibid.*, s. 6; 9 Statutes 798.

(*a*) *Ibid.*, new s. 8 (2) in Sched. II. to Act of 1932; 25 Statutes 271.

(*b*) *Ibid.*, s. 1 (7), as amended by Sched. II. to the Act of 1932.

(*c*) Repealed by the Children Act, 1908, s. 134 and Sched. III.

(*d*) Now repealed and replaced by the Children and Young Persons Act, 1933.

(*e*) Repealed by the Children Act, 1908, and other statutes. Now replaced by the Children and Young Persons Act, 1933.

(*f*) Repealed by the Children Act, 1908, s. 134 and Sched. III.

(*g*) Children Act, 1908, s. 3; 9 Statutes 707.

(*h*) 25 Statutes 253.

conditions to be complied with so long as the number of infants kept in the dwelling exceeds a specified number. Apparently, so long as there is one infant in respect of whom notice is required, the local authority may regulate the number of infants to be kept there, even though all but one are infants in respect of whom no notice need be given. If a maximum so fixed be exceeded, or a condition imposed not complied with, a person keeping an infant in the dwelling in respect of whom notice is required is guilty of an offence under Part I. of the Act of 1908 (i). [385]

Removal of Infants.—Under sect. 9 (1) of the Act of 1908, any infant in respect of whom an offence is committed under Part I. of the Children Act, 1908, may, upon the conviction of the offender, be removed, if the court so order, to a place of safety. A "place of safety" means any remand home, workhouse, or police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive an infant (k).

In addition, a court of summary jurisdiction may, upon the complaint of the local authority, make an order under sect. 67 of the Act of 1932, directing the removal of an infant, in respect of whom notice is required to be given, to a place of safety until it can be restored to its relatives or other arrangements can be made. In a case where there is proof of imminent danger to the health or well-being of the infant, a single justice may exercise this power upon the application of an infant protection visitor or other authorised person under sect. 2 of the Act of 1908, and, if need be, may exercise the power *ex parte*. Save in emergency cases, the correct procedure seems to be to issue a summons to the person keeping the infant, calling upon him to show cause why the order of removal should not be made. He is entitled to be heard.

The grounds upon which such action may be taken are that an infant in respect of whom notice is required is about to be received or is being kept (i.) in overcrowded, insanitary or dangerous premises; or (ii.) by a person who, through old age, infirmity, ill-health, ignorance, negligence, inebriety, immorality (l) or criminal conduct, or for any other reason, is unfit to have care of it; or (iii.) in premises, or by a person, in contravention of Part I. of the Act of 1908 (m); or (iv.) in an environment detrimental to the infant (i.e. to the particular infant, having regard to its health or disposition or circumstances).

If an order of removal be made, it may be enforced by a constable, or by a visitor or other person appointed or authorised under sect. 2 of the Children Act, 1908 (n). Any person who refuses to comply with the order upon its being produced, or who obstructs the constable, visitor or authorised person, is guilty of an offence under Part I. of the Children Act, 1908 (n). [386]

Life Insurance.—A person who is required to give a notice under Part I. of the Children Act, 1908, is deemed to have no interest in the life of the child for the purposes of the Life Assurance Act, 1774 (o),

(i) Act of 1932, s. 66; 25 Statutes 253.

(k) Children Act, 1908, s. 131, as amended by the Act of 1932, Sched. II.

(l) As to immorality, see remarks of Lord CAMPBELL, C.J., in *R. v. Clarke* (1857), 7 E. & B. 186, questioning *R. v. Greenhill* (1880), 4 A. & E. 624. These remarks, however, appear to have referred to the rights of parents or guardians; those of paid foster-parents are clearly less.

(m) See, for example, s. 3.

(n) Act of 1932, s. 67 (2); 25 Statutes 253.

(o) 9 Statutes 846.

which prohibited life insurances unless the insurer had an interest in the life of the insured, and provided that if the insurer had such an interest, the amount to be recovered should not exceed the value of that interest. If any person required to give a notice either directly or indirectly insures or attempts to insure the life of the infant, he is guilty of an offence, and if a company, within the meaning of the Life Assurance Companies Acts, 1870 to 1872 (*p*), or any other company, society or person, knowingly issues, or procures or attempts to procure to be issued, to or for the benefit of such a foster-parent or to any person on his behalf, a policy on the life of the infant, the company, society or person is also guilty of an offence under Part I. of the Act of 1908 (*q*); but of course a company cannot be imprisoned and is therefore liable only to the fine.

With regard to an offence of procuring, it may be noted that this word is used to describe an accessory before the fact and is also found in sect. 5 of the Summary Jurisdiction Act, 1848 (*r*). Procurement may take place through a third party (*s*), but there must be some active proceeding on the part of the defendant. [387]

Anonymous Advertisements.—Advertisements to the effect that a person or a society will undertake or arrange for the nursing and maintenance of infants under the age of nine years are illegal, unless the person's name and residence or the society's name and office are truly stated in the advertisement (*t*). Every person who knowingly publishes an advertisement in contravention of this provision is guilty of an offence under Part I. of the Act of 1908 (*t*). [388]

Exemptions from Statute.—The provisions of Part I. of the Children Act, 1908 (as amended by the Children and Young Persons Act, 1932), do not apply in the case of a person who undertakes the nursing and maintenance of an infant under any Act for the relief of the poor or under any order made under any such Act (*u*). Nor do they apply when the nursing and maintenance of an infant are undertaken by a grand-parent, brother, sister, uncle or aunt; and this, whether by consanguinity or affinity (*u*). In the case of an illegitimate infant, the exemption applies to persons who would be so related if the child were legitimate, and a legal guardian (*i.e.* a person appointed, according to law, to be a child's guardian by deed or will, or by order of a court of competent jurisdiction) is also exempt from these provisions (*u*).

Sect. 69 of the Act of 1932 (*a*) also exempts hospitals, convalescent homes and institutions, which (1) are maintained by a Government department, local authority, or any other authority or body constituted by special Act of Parliament or Royal Charter; or (2) have been granted exemption by the local authority; or (3) transmit annual returns to the H.O. under Part V. of the Children and Young Persons Act, 1933 (which deals with inspection, etc., of homes supported by voluntary contributions); or (4) are certified or approved by the Board of Control

(*p*) Repealed by the Assurance Companies Act, 1909, which sec at 2 Statutes 724.

(*q*) Children Act, 1908, s. 7; 9 Statutes 798.

(*r*) 11 Statutes 275.

(*s*) *R. v. Cooper* (1838), 5 C. & P. 535; 14 Digest 98, 692, and see *Foster's Crown Cases*, 3rd ed., p. 125.

(*t*) Children and Young Persons Act, 1932, s. 68; 25 Statutes 254.

(*u*) Children Act, 1908, s. 11; 9 Statutes 799.

(*a*) 25 Statutes 254.

under the Mental Deficiency Acts, provided that no children or young persons, who are not mental defectives within the meaning of these Acts, are received.

Further, Part I. of the Children Act, 1908, does not apply in relation to any mental defective who is, with the consent of the Board of Control, under care elsewhere than in an institution, a certified house, or an approved home (b). [389]

Offences.—Any offence under Part I. of the Act of 1908 is punishable summarily, and on conviction the offender is liable to imprisonment for a term not exceeding six months or a fine not exceeding £25 (c). Under sect. 17 of the Summary Jurisdiction Act, 1879 (d), the defendant may claim to be tried by a jury. By sect. 9 (2) of the Act of 1908, as amended by the Second Schedule to the Act of 1932, fines received are to be paid to the local authority and credited to the fund or rate out of which they defray the expenses of administering Part I. of the Act of 1908. [390]

Practical Administration.—Children taken in for reward, sometimes known as nurse infants, are supervised by women officers known as infant protection visitors. A male sanitary inspector is often appointed for occasional duty on this work. He deals with cases of obstruction and makes a sanitary survey of premises where nurse infants are to be lodged. The standard of home environment to be expected is that of the normal working-class child. Special attention is paid to the safety of the child in regard to the means of escape from fire and the presence of a fireguard. There is some difference of opinion as to whether ordinary health visiting under the maternity and child welfare scheme should be combined with the work of the infant protection visitor. The health visitor is an officer with educative functions, who has no right of entry to premises, and who gains her ends by friendly approaches, but the infant protection visitor has a statutory right to enter premises and to examine nurse infants. Her relations with the foster-parents are usually cordial, but not always so, and she may have to take drastic action in any case where the health or well-being of the nurse infant is in jeopardy. It can hardly be to the benefit of a health visitor that she should be identified with any measures of coercion. It is therefore felt by some that nurse infants should be under the supervision of a special officer who is at the same time a member of the maternity and child welfare staff. None the less the more usual practice is for the offices of health visitor and infant protection visitor to be combined.

The time is past when voluntary workers were appointed as infant protection visitors. The officer appointed need not have any statutory qualifications but is usually qualified by examination as a health visitor. The scope of the infant protection visitor's duties is wide in relation to the nurse infant. She has to satisfy herself as to its health and well-being, and for this purpose she is entitled to have it undressed, to examine its clothing, its food and the method of preparation, and its general surroundings, including a consideration of the foster-parent herself and her family.

It is no part of the duty of an infant protection visitor to recommend foster-parents or to advise as to the placing of a nurse infant, but useful work of this kind is often done through informal channels. [391]

(b) Act of 1932, s. 69 (8); 25 Statutes 254.

(c) Act of 1908, s. 9; 9 Statutes 790.

(d) 11 Statutes 820.

Foster-parents are encouraged to attend infant welfare centres with the children under their charge. For such children as are of school age the facilities offered by the school medical service are available. The days of baby-farming are well-nigh past and the majority of foster-parents are poor women who take in unwanted children for a modest reward and who devote much care and affection to their fosterlings. The small minority who are neglectful or incapable are dealt with, but legal proceedings, with their attendant publicity, are avoided if possible. They might defeat any good purpose by leading potential foster-mothers to regard the profession not only as hazardous, but even as discreditable. It is to the advantage of foster-children in general that there should be available a good supply of kindly women as foster-parents.

Foster-children are sometimes taken into institutions for payment, and even a child taken into a hospital for temporary treatment may be technically a nurse infant if any payment is made. The scheme of the law is not intended to apply generally to such institutions, some of which are exempt by the statute and others by special resolution of the local authority. If there is any suspicion or evidence of bad management of foster-children in an institution, the local authority may hold certain powers of inspection in reserve. Boarding-schools and nursing homes are subject to inspection unless specially exempted. This is usually granted, but the power to inspect small establishments where only a few children are taken in may be usefully exercised in some cases. It is not unknown for such children to be below the normal standard in matters of diet, cleanliness and general care. The power given to the local authority to fix the maximum number of children to be kept by a foster-parent is often exercised and a foster-parent should rarely be permitted to care for more than two infants unless she has assistance. [392]

It is important to search the advertisement columns of newspapers for advertisements from prospective foster-parents. Unless the identity of the advertiser is clearly stated the publisher of the newspaper commits an offence. This is intended to check the surreptitious disposal of children. Bye-laws made by the local supervising authority under sect. 4 of the Nursing Homes Registration Act, 1927 (e), will usually contain a provision (f) whereby the keeper, whenever he arranges or is a party to any arrangement for the removal of a child born in the home to other premises to be placed in the custody or care of any person other than its parent or guardian or a relative, must make an entry in the register of patients, recording the address to which the child is removed, the name of the person concerned with its custody, and the amount of payment, if any, made to the keeper in respect of the arrangement. All information of this kind will be transmitted to the infant protection visitor for inquiry and verification. See also title NURSING HOMES.

A register of foster-parents and nurse infants is kept by the M.O.H., and the greatest care is taken to ensure that the removal of a nurse infant is correctly reported to the local authority concerned. For a draft of a leaflet of advice to foster-parents, comprising a brief statement of the provisions which a foster-parent must know and observe, see Memo. 165 (M.C.W.), 1932, of the M. of H. (g). [393]

(e) 11 Statutes 787.

(f) See model bye-laws of M. of H., series XXIVA.

(g) May be purchased of H.M. Stationery Office, Kingsway, W.C.2, for 1d.
L.G.L. VII.—18

London.—The law relating to infant life protection in London is the same as elsewhere. By sect. 10 of the Children Act, 1908 (*h*), the local authorities were originally the Common Council, and outside the City of London, the L.C.C., but by the Transfer of Powers (London) Order, 1933 (*i*), the functions of the L.C.C. under the Children and Young Persons Acts, 1908 to 1932, were transferred to the metropolitan borough councils. This order contains provisions as to transferred officers, their superannuation and right to compensation, etc. The Common Council remain the authority for the City. [394]

(*h*) 9 Statutes 799.

(*i*) S.R. & O., 1933, No. 114; printed at 26 Statutes 613.

INFANT WELFARE

See MATERNITY AND CHILD WELFARE.

INFANTS, CHILDREN AND YOUNG PERSONS

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See also titles :

ADOPTION OF CHILDREN ;
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BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN ;
CARE AND PROTECTION OF CHILDREN AND YOUNG PERSONS ;
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JUVENILE COURTS ;
MATERNITY AND CHILD WELFARE ;
NOTIFICATION OF BIRTHS ;
NURSING HOMES ;
REMAND HOMES.

Introductory.—Social legislation, since the nineteenth century, has tended more and more to concern itself with the welfare of the young as a matter for supervision by Government departments and local authorities. It is no longer a matter simply of the prevention of cruelty to or exploitation of the child ; his welfare, health of body and

mind, sound education, proper guardianship, all these are the concern of the legislature and the executive. [395]

Notification of Births.—The Notification of Births Act, 1907 (*a*), as extended by the Notification of Births (Extension) Act, 1915 (*b*), imposes a duty upon the father, and upon any person in attendance on the mother, to give notice in writing to the M.O.H. within thirty-six hours after the birth of a child. This requirement is additional to the obligation to register a birth.

The council of a county borough are the local authority for this purpose, and the county council are often the local authority, but whether the council of a non-county borough or district are the local authority for their area depends on whether before July, 1915, they had adopted the Act of 1907, and whether an order has been made by the M. of H. under sect. 2 (4) of that Act as amended by sect. 61 of L.G.A., 1929 (*c*). It will be convenient to refer to the authorities who are responsible as "welfare authorities." But a county council, borough or district council, whether a welfare authority or not, seem to be empowered by sect. 2 of the Act of 1915 to arrange for the care of expectant or nursing mothers or young children and to incur expenses for those purposes. See also sect. 1 of the Maternity and Child Welfare Act, 1918 (*d*), referred to later, and title NOTIFICATION OF BIRTHS AND MARRIAGES. [396]

Maternity and Child Welfare.—The responsibility thus assumed may begin even before the child is born. Under the Midwives Act, 1902 (*e*), the Central Midwives Board regulate the training and practice of midwives, and issue certificates, and the local supervising authority (*f*) are charged with certain duties and exercise powers of inspection. The Act of 1902 was supplemented by the Midwives Act, 1918 (*g*), which allowed these authorities to aid the training of midwives and to make grants for that purpose.

Sect. 1 of the Maternity and Child Welfare Act, 1918 (*h*), allows any local authority within the meaning of the Notification of Births Act, 1907, to make such arrangements as may be sanctioned by the M. of H., for attending to the health of expectant mothers and nursing mothers as well as of children under five years of age who are not in schools recognised by the Board of Education. Here again the question whether the county council or the council of a non-county borough or district are the maternity and child welfare authority depends on the adoption by them of the Notification of Births Act, 1907, and also whether an order has been made by the M. of H. under sect. 60 of L.G.A., 1929 (*i*), for the transfer of the maternity and child welfare service to the local education authority for elementary education.

Maternity homes are also supervised by local authorities. By the Nursing Homes Registration Act, 1927 (*k*), local supervising authorities (*l*) are entrusted with duties as to registration of nursing

(a) 15 Statutes 765.

(c) 10 Statutes 925.

(e) *Ibid.*, 720.

(f) The county or county borough council; see s. 8 of the Act of 1902.

(g) 11 Statutes 744.

(i) 10 Statutes 924.

(l) Under s. 9 the county council or county borough council, but the county council may delegate any of their functions to the council of a non-county borough or district.

(b) *Ibid.*, 767.

(d) 11 Statutes 742.

(h) *Ibid.*, 742.

(k) 11 Statutes 785.

homes (including maternity homes) and have power to refuse registration on various grounds. They also inspect such homes and may make bye-laws prescribing the records to be kept. See titles **MATERNITY AND CHILD WELFARE** and **NURSING HOMES**. [397]

Infant Life Protection.—In relation to children put out to nurse, local authorities have responsibilities under Part I. of the Children Act, 1908 (*m*), as amended by Part V. of the Children and Young Persons Act, 1932, and the Second Schedule to that Act (*n*), the central authority being the Minister of Health. The local authority concerned are the county or county borough council, and the functions are discharged as functions under the Maternity and Child Welfare Act, 1918 (*n*), but if the council of a non-county borough or district have established a maternity and child welfare committee these responsibilities are by sect. 2 of the L.G.A., 1929 (*o*), to be discharged by that council instead of the county council. See, further, the title **INFANT LIFE PROTECTION**, *ante*. [398]

Cruelty, etc., to Children.—By sect. 98 (1) of the Children and Young Persons Act, 1933 (*p*), a local authority (*q*) or a poor law authority (*r*) may institute proceedings for any offence under that Act; and although prosecutions for cruelty to children are often undertaken by voluntary societies, it is important that the local authority should be able to act in cases where appropriate action is not otherwise taken.

Sect. 1 of the Act of 1933 (*s*) deals with offences of cruelty by persons of sixteen years of age or over, to a person under that age, if they have the custody, charge or care of him. The offences are those of wilfully assaulting, ill-treating, neglecting, abandoning or exposing him in a manner likely to cause unnecessary suffering or injury to health. The section is widely drawn; for instance failure to apply in case of need for poor relief, medical or otherwise, may be punishable neglect. Offences are triable either on indictment or before a court of summary jurisdiction. Part I. of the Act of 1933 deals also with various other offences against children and young persons. [399]

Care and Protection of Children.—By sect. 62 (2) of the Act of 1933 (*t*) the primary duty of bringing before a juvenile court any child (under fourteen years) or young person (between fourteen and seventeen years) who is in need of care or protection is imposed upon the local authority (*u*), though proceedings can be taken by certain other bodies or persons. The expression "child or young person in need of care or protection" is defined in sect. 61 of the Act. Broadly speaking, it includes a child or young person who, having no parent or guardian, or an unfit parent or guardian, is either falling into bad associations, or is exposed to moral danger, or is beyond control; or a child or young

(*m*) 9 Statutes 795; 25 Statutes 252, 270.

(*n*) 11 Statutes 742.

(*o*) 10 Statutes 883.

(*p*) 26 Statutes 284.

(*q*) Meaning as respects children under fourteen the local elementary education authority, and as respects others the county council or county borough council; see s. 96 of the Act.

(*r*) Defined in s. 107 as the county council or county borough council and including a joint poor law committee.

(*s*) 26 Statutes 172.

(*t*) *Ibid.*, 208.

(*u*) As indicated in note (*g*), *ante*.

person in respect of whom certain specified offences have been committed, or who is a member of the same household as an offender or a victim, and who requires care and protection; or a child or young person who by reason of vagrancy is prevented from receiving proper education. As to the steps which should be taken by the local authority, see the title CARE AND PROTECTION OF CHILDREN AND YOUNG PERSONS in Vol. II.

Under sect. 62 of the Act, a child or young person adjudged to be in need of care or protection may be sent to an approved school, committed to the care of a "fit person" including a local authority (a), or placed under the supervision of a probation officer or other person for a period not exceeding three years; or his parent or guardian may be ordered to enter into a recognisance to exercise proper care and guardianship. [400]

Refractory Children.—A parent or guardian of a child or young person may under sect. 64 of the Act (b) bring him before a juvenile court as being beyond control, and if the court is satisfied that it is expedient so to deal with him and that the parent or guardian understands the position and consents to the order, may either order the child or young person to be sent to an approved school, or to be placed under the supervision of a probation officer or other person for a period not exceeding three years. An approved school order may not be made, however, unless the local authority within whose area he lives agrees. A child or young person maintained in or boarded out from any poor law school or institution, who is refractory, may be brought by the poor law authority before a juvenile court, and the court may, if it thinks fit, commit him to an approved school (c). [401]

Juvenile Offenders.—Persons under seventeen years of age who are charged with an offence are brought before a juvenile court, unless charged jointly with an adult (d), and are usually tried summarily in respect of indictable offences. In all cases where a child or young person is to be brought before a court of summary jurisdiction charged with an offence, the police are required to notify the probation officer and the appropriate local authority (e), unless the local authority or poor law authority will bring the case before the court (f). The local authority to be notified are the authority for the area in which the child or young person is resident, or, if that be not known, the authority for the area in which the offence is alleged to have been committed.

The local authority so notified, or a local or poor law authority charging a child or young person, are bound, save in trivial cases, to make inquiries about the child's or young person's circumstances and character and, if required, inform the court of the result, and to supply the court with information, in proper cases, as to available approved schools (f).

Offenders under seventeen years of age may be dealt with in various ways. If guilty of an offence which would be punishable in the case of an adult by imprisonment, a child or young person may be committed to the care of a "fit person," which term includes a local authority, or

(a) See *post*, p. 199, and title FIT PERSON, LOCAL AUTHORITY AS, in Vol. VI.

(b) 26 Statutes 209.

(c) Act of 1933, s. 65; 26 Statutes 210.

(d) *Ibid.*, s. 46; 26 Statutes 200.

(e) As to these, see note (g) *ante*, on p. 196.

(f) Act of 1933, s. 85; 26 Statutes 104.

committed to an approved school (g). These methods of dealing with children and young persons are additional to other methods provided by the law. [402]

Juvenile Courts.—As indicated above, local authorities (h) have important duties to perform in connection with cases brought before the juvenile courts, and their officers usually attend to give information as to school character, approved school accommodation, and in other ways to assist the court. A local authority may appear in any court of summary jurisdiction (which includes a juvenile court) by any member or officer authorised by resolution, either generally or in respect of a particular matter, to institute or defend proceedings on their behalf (i). See title JUVENILE COURTS. [403]

Remand Homes.—By sect. 77 of the Act of 1933 (j) a duty of providing remand homes for children and young persons up to seventeen years of age is imposed on the county or county borough council, and children and young persons may be sent to such a home on remand, or committal for trial, or by way of punishment, or in default of the payment of a fine, or while awaiting admission to an approved school, or while in custody after arrest before being brought before a court (k). A child can never be sent to prison, and a young person can only be sent there if the court certifies that he is so unruly or depraved that he cannot safely be detained in a remand home (l). A remand home is also within the definition of place of safety (m) and therefore a place to which "care or protection" cases can be sent.

Remand homes are liable to inspection by the H.O. (n) and are regulated by the Remand Home Rules, 1933 (o). In a H.O. circular of August 9, 1933, the hope was expressed that through their medical services the local authorities would be able to provide adequate facilities for medical examination.

It should be noted that by sect. 33 of the Act of 1933 (p) young persons of sixteen years of age committed to assizes or quarter sessions with a view to Borstal detention may still be sent to prison after conviction, under sect. 10 of the Criminal Justice Administration Act, 1914 (q), while awaiting appearance at assizes or quarter sessions, without the necessity for a certificate as to unruliness or depravity as mentioned above. Further, as to Remand Homes, see that title. [404]

Approved Schools.—These schools, which replace the reformatory and industrial schools, receive children and young persons under the age of seventeen years, under orders of the courts, either as offenders, or as in need of care or protection within the meaning of sect. 61 of the Act of 1933, or as beyond the control of their parent or guardian, or as refractory while in a poor law institution, or in certain cases as truants.

Approved schools may be provided by local authorities or by associations of persons, and in case of a deficiency of approved school

(g) Act of 1933, ss. 57, 76; 26 Statutes 206, 216.

(h) As to these, see note (q), *ante*, on p. 196.

(i) L.G.A., 1933, s. 277; 26 Statutes 452. (j) 26 Statutes 216.

(k) Act of 1933, ss. 32, 33, 54; 26 Statutes 192, 193, 204.

(l) *Ibid.*, s. 52; 26 Statutes 203.

(m) *Ibid.*, s. 107; 26 Statutes 288.

(n) *Ibid.*, s. 73; 26 Statutes 217.

(o) 26 Statutes 193.

(p) S.R. & O., 1933, No. 987.

(q) 11 Statutes 875.

accommodation, every local authority concerned is under the duty of remedying the deficiency, either alone or in combination with other local authorities (r).

A local authority are liable to contribute towards the maintenance of children and young persons committed to an approved school who were resident in their area, or, in certain cases, where the offence was committed or the circumstances leading to committal arose in their area (s). Parents and other persons may also be ordered by the court to contribute (t). Further, as to Approved Schools, see that title in Vol. I. [405]

Poor Law Children.—The functions formerly performed by boards of guardians were transferred to county and county borough councils by Part I. of the L.G.A., 1929 (u), who then became public assistance authorities.

Poor law children may be maintained in schools or institutions or may be boarded out with a foster-parent subject to the regulations in Part VI. of the Public Assistance Order, 1930 (a).

Sect. 52 of the Poor Law Act, 1930 (b), allows a public assistance authority by resolution to transfer to themselves the rights of the parent of any child maintained by them if (1) the child has been deserted by his parent; or (2) if the council consider that the parent is unfit to have control, by reason of mental deficiency or vicious mode of life; or (3) if the parent is under sentence of penal servitude or is detained under the Inebriates Act, 1898 (c); or (4) if the parent has been sentenced to imprisonment for any offence against any of his children; or (5) if the parent is permanently bedridden or disabled and is an inmate of the workhouse and consents; or (6) if the parents, or in the case of an illegitimate child the mother, are dead. Ordinarily the resolution has effect until the child attains the age of eighteen years, but it may be rescinded, or the council may allow the child to be permanently or temporarily under the control of the parent or of some other person or society.

A parent or guardian may apply to a court of summary jurisdiction to order such a resolution to be determined or varied (sect. 52 (2)). By sect. 52 (6) of the Act, it is a summary offence knowingly to assist a child who has been thus placed under the control of the council to leave, without their consent, the place where the child is under that control; or to induce a child to leave; or to harbour or conceal him or prevent him from returning (d). [406]

Local Authority as "Fit Person."—As stated under the heading of "Care and Protection of Children," a local authority may be a "fit person" to whom the care of a child or young person may be entrusted (e). Under the Children and Young Persons Act, 1933, a

(r) Act of 1933, s. 80; 26 Statutes 218. As to the local authority, see note (g), ante, on p. 196.

(s) *Ibid.*, s. 90; 26 Statutes 227.

(t) *Ibid.*, s. 87; 26 Statutes 224.

(u) 10 Statutes 883.

(a) S.R. & O., 1930, No. 185; 12 Statutes 1060.

(b) 12 Statutes 994.

(c) 9 Statutes 955.

(d) The Poor Law Act, 1930, also deals with emigration and other matters affecting children.

(e) Children and Young Persons Act, 1933, s. 76; 26 Statutes 216.

child or young person under seventeen years of age may be committed to the care of a fit person willing to receive him, if the child or young person has been found guilty of an offence punishable in the case of an adult with imprisonment (f), or under sects. 61 and 62 has been found to be in need of care or protection (this may be in addition to a supervision order under the latter section), or has been the subject of a supervision order and has been brought before the court in his own interest to be further dealt with (g). See title FIT PERSON, LOCAL AUTHORITY AS. [407]

Elementary School Children.—Local education authorities for elementary education are the county or county borough council, but the council of a borough with a population of 10,000 at the census of 1901, and the council of an urban district with a population at the same census of 20,000, are also the authority for elementary education (h). For higher education, the local education authorities are county and county borough councils (i).

In addition to the provision, maintenance and inspection of schools and the enforcement of school attendance, the local education authorities provide for medical inspection and treatment, and in some cases for the provision of meals for necessitous children, physical training, and the provision of nursery and other special schools; see in Vol. V. the titles EDUCATION SPECIAL SERVICES and ELEMENTARY EDUCATION. [408]

Blind, Deaf, Defective and Epileptic Children.—These children are dealt with in Part V. of the Education Act, 1921 (k). Local education authorities for elementary education must, when necessary, make special provision for the education of such children, but this obligation does not apply to idiots or imbeciles, who can be dealt with under the Mental Deficiency Acts (l). Provision is made in sect. 65 for obtaining contributions from the parent in respect of expenses incurred by the local education authority. See, further, the title BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN in Vol. II. [409]

Employment.—The employment of young people has been subject to increasingly strict regulation for some time past. The principal enactments dealing with the matter are in Part II. of the Children and Young Persons Act, 1933 (m), but sects. 93 to 99 and 108 of the Education Act, 1921 (n), which deal with employment, are still operative. Local education authorities for elementary education are concerned with the enforcement of these provisions as respects children, and are also empowered by sect. 18 of the Act of 1933 (o) to make bye-laws as to the employment of children. They may also under sect. 94 of the Act of 1921 prohibit, or attach conditions to, the employment of a school child if his employment is injuring his health or physical development, or interfering with his education.

Under sect. 18 of the Act of 1933, no child under twelve may be employed at all, unless a bye-law authorises employment by parents in light agricultural or horticultural work. Between the ages of twelve and fourteen years there is no general prohibition, but the

(f) Children and Young Persons Act, 1933, s. 57.

(h) See Education Act, 1921, s. 3 (1); 7 Statutes 131.

(i) *Ibid.*, s. 3 (2).

(l) Education Act, 1921, s. 52; 7 Statutes 159.

(m) 7 Statutes 181—183, 180.

(g) *Ibid.*, s. 66.

(k) 7 Statutes 159.

(n) 26 Statutes 181.

(o) 26 Statutes 181.

section prescribes certain conditions, and bye-laws made by local education authorities may restrict such employment in various respects.

Part II. of the Act of 1933 also contains special provisions as to the employment of children in entertainments (sect. 22), as to children and young persons under sixteen taking part in performances dangerous to life or limb or being trained for dangerous performances (sects. 23, 24), and as to street trading by children and young persons under sixteen (sect. 20). As to street trading, there is an absolute prohibition of trading by children, and young persons under sixteen may be employed only if bye-laws authorise it, and it must be employment by their parents (*p*).

For further information, see title EMPLOYMENT OF CHILDREN AND YOUNG PERSONS in Vol. V. [410]

Adoption of Children.—By the Adoption of Children Act, 1926 (*g*), and the rules made thereunder, adoption orders may be made in respect of infants by the Chancery Division of the High Court, the county court or a juvenile court. For the purpose of any application under the Act, the court must appoint some person or body to act as guardian *ad litem* of the infant with the duty of safeguarding his interests. A local authority may, if it consents, be appointed (*r*). In that case the court may authorise the local authority to incur necessary expenditure, and may direct out of which fund or rate it is to be met.

In some places the local education authority for elementary education act as guardian *ad litem*, unless they are respondents by virtue of being, in another capacity, the custodian of the infant or liable to contribute towards its maintenance.

The duties of the guardian *ad litem* are prescribed by the rules. It is convenient that the guardian *ad litem* should present a written report to the court, though he (or in the case of a local authority, the officer who has actually made the investigations) should of course be present in court at the hearing of the application.

See also title ADOPTION OF CHILDREN in Vol. I. [411]

(*p*) Act of 1933, s. 20 ; 26 Statutes 183.

(*g*) 9 Statutes 827.

(*r*) Act of 1926, s. 8 (3) ; 9 Statutes 880. The Act does not define "local authority."

INFECTED CLOTHING

See DISINFECTION.

INFECTED FOOD

See UNSOUND FOOD.

INFECTIOUS DISEASES

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See also titles :

CANAL BOATS ;
CLEANSING OF PERSONS ;
DISEASES ;
DISEASES OF ANIMALS ;
DISINFECTION ;
HOSPITAL STAFF ;
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MEDICAL OFFICER OF HEALTH ;
MIDWIVES ;

MILK AND DAIRIES ;
PORT SANITARY AUTHORITIES ;
PREVENTION OF DISEASE ;
PUBLIC HEALTH ;
RATS AND MICE ;
SHELL FISH, CLEANSING OF ;
TENTS, VANS AND SHEDS ;
TUBERCULOSIS ;
UNSOUND FOOD ;
VENEREAL DISEASES.

INTRODUCTORY

Outline of the Law.—The law in relation to infectious disease is extensive and complex. It restricts the liberty of individual members of the community and places many obligations upon them with the object of preventing the spread of disease; it also invests local authorities with powers and imposes duties upon them with the same object. Nevertheless, cases connected with infectious disease seldom come before judicial authorities, and it is necessary to consider why this is so, in order that the law and procedure to be described should be seen in their true perspective. Medical and scientific knowledge has advanced greatly since much of the law was settled, and while most of it can still be regarded as useful in circumstances which occasionally arise, it is now generally agreed that the application of any one enactment to an individual infective person, or to the premises or articles which he may have infected, has little effect in staying the dissemination of disease. The transmission of infection indirectly from infective persons either by articles such as bedding, bed-clothes, personal clothing, curtains, letters, books, etc. (included under the general term "fomites"), or as the result of a contamination of premises, is now regarded as of less importance than formerly, at least so far as the diseases prevalent at the present day are concerned. In particular, the capacity of infective agents to survive, for any considerable period of time, outside the human body is widely questioned. This view has an obvious bearing upon the enforcement of disinfection in general, although this mode of prevention is still regarded as useful in connection with such things as handkerchiefs or other absorbent articles recently soiled with infective discharges, or underclothing or bed-clothing similarly contaminated, especially with discharges from the bowel, and also for all articles infected by patients suffering from the virulent form of smallpox known as *variola major*. More important still, it has come to be realised that persons contract infectious diseases not only in recognisable forms, against the spread of infection from which precautions can be taken and enforced, but also in unrecognised and often unrecognisable forms (called "abortive" types of disease), and that persons may harbour infection in their bodies without ever having shown any symptoms or signs of illness whatever. Scientific evidence indicates that such abortive cases and carriers are more numerous than actual patients, so far as some of the infectious diseases are concerned, so that restrictive and precautionary measures directed solely at persons known to be suffering from the disease can have only a limited influence upon its spread. Naturally, medical officers of health, having this knowledge, hesitate to enforce the law against known infectious persons, unless the circumstances in which such persons are placed render them exceptionally dangerous to the community. Moreover, compliance with the law usually carries with it such benefits, as for instance hospital treatment without charge, that it meets with little opposition from most members of the public. Indeed, an M.O.H. who desires to conform with modern knowledge in departing from such a time-honoured practice as disinfection may meet with resistance from the very people upon whom the law imposes liabilities.

The gravity of the risk of spreading infection depends upon many factors, such as the deadliness of the disease in question, the stage to which it has progressed before coming under notice and its special mode of transmission, and general legislation is not well adapted to the

control of these factors. While it may be desirable that a house, which has been occupied by a person suffering from certain of the infectious diseases, should not be let without prior disinfection, and without informing the prospective tenant of the facts (*post*, p. 222), an M.O.H. would hesitate to advise an authority that such action following upon a case of puerperal fever or erysipelas should be regarded as detrimental to the public health. On the other hand, failure to take similar precautions in an institution for maternity patients might be regarded as a grave dereliction of duty (*a*). Each disease, or group of diseases, presents special problems of infection and the advance of knowledge constantly indicates to the practical administrator new lines of approach, so that infectious diseases lend themselves better to legislation by order or regulation than by Act of Parliament. The M. of H. has a wide power to act in this way. [412]

The law in relation to infectious disease is contained mainly in the P.H.A., 1875, ss. 120 to 148 (*b*), the Infectious Disease (Notification) Acts, 1889 and 1899 (*c*), the Infectious Disease (Prevention) Act, 1890 (*d*), the P.H.A. Amendment Act, 1907, ss. 52 to 68 (*e*), the P.H.A., 1925, ss. 57 to 65 (*f*), and in numerous orders and regulations applicable to particular diseases or to persons or premises in connection with which infection gives rise to special problems. Provisions also occur incidentally in Acts, orders and regulations principally concerned with other special aspects of the public health or social welfare.

Local authorities are concerned chiefly with the prevention of the occurrence or dissemination of infectious disease, but they have also responsibilities for treatment, especially when they admit patients either voluntarily or under compulsion, to institutions for isolation. Their duties include payment for notifications of disease, the control of persons suffering from infectious disease and of other persons in contact with them, the provision of places for the reception of the sick or their contacts, the provision of temporary supplies of medicine and medical assistance for the poorer inhabitants of their district, the disinfection of infected premises and the prevention of their being let without prior disinfection, the prevention of the spread of disease through common lodging-houses or schools, or by means of milk, midwives or dead bodies, and the destruction of insects or rodents liable to convey disease.

The law and practice in relation to tuberculosis differs in many respects from the corresponding matters affecting other infectious diseases and is dealt with elsewhere (see title TUBERCULOSIS). The present title is concerned with acute infectious diseases and only passing reference is made to tuberculosis and other chronic infections. [413]

Infection.—The word infection was originally used, in connection with disease, to denote contamination of air or water, so that an infectious disease was regarded as one which was acquired through these media, as distinct from a contagious disease, *i.e.* one which could be transmitted by direct or indirect contact between animal bodies. The distinction has been impossible to maintain in practice, so that the phrase "infectious disease" has come to be used to include diseases

(a) See *Marshall v. Lindsey County Council*, [1935] 1 K. B. 516 C. A. ; Digest (Supp.).

(b) 18 Statutes 674—683.

(c) *Ibid.*, 816.

(d) *Ibid.*, 1140—1144.

(e) *Ibid.*, 811, 879.

(f) *Ibid.*, 930—936.

which are strictly speaking contagious, and the words "contagious disease" are applied in law to diseases which are not necessarily transmitted by contact. The epithet "communicable" is sometimes used in substitution for either of the words "infectious" or "contagious," and, being more general in significance, it is theoretically preferable, but the phrase "infectious disease," with the same wide application, is now firmly established in British law and practice. The word "infection" is used to denote both the communication of disease and the agency, germ or micro-organism which is regarded as its cause. In this article the infectious diseases which are discussed are almost all known or reasonably assumed to be caused by pathogenic micro-organisms, but mention is also made of diseases directly due to insect parasites, without the intervention of any micro-organism. [414]

Infectious Disease in Law.—Although the words "infectious disease" appear frequently in Acts, orders and regulations, their meaning is not always defined. When the term is defined, the effect is usually restrictive, but not always to the same extent. In the P.H.A., 1875, such disease is variously referred to as "infectious disease," "infectious disorder," "dangerous infectious disorder" and "epidemic, endemic or infectious disease," but none of these terms is defined. In sect. 6 of the Infectious Disease (Notification) Act, 1889 (*g*), the expression "infectious disease to which this Act applies" means the diseases specifically mentioned in that section, and any others added to the list by the local authority as provided in sect. 7 of the Act. This definition is important as it is applied by reference in several other Acts. For instance, the measures of control applicable under the Infectious Disease (Prevention) Act, 1890, in districts where any section of this Act has been adopted, may be applied only to the diseases specifically mentioned in the Act of 1889, and to any other infectious diseases to which the Act of 1890 may be extended locally in the same manner as the list of notifiable diseases under the Act of 1889 may be extended (*h*). A local authority may therefore extend the definition of infectious disease for the purpose of both Acts in the same way and at the same time. Any provision of the P.H.As. Amendment Act, 1907, which may have been put in force by order, and relates to infectious disease, extends to any infectious disease to which the Act of 1889 applies for the time being in the area (*i*). In these three Acts the expression "infectious disease" is used without the restrictive qualification "dangerous," save in those sections which merely amend sections of the Act of 1875. On the other hand, certain sections of the P.H.A., 1925, which deal with the control of infection in common lodging-houses, or arising from dead bodies, employ the term "dangerous infectious disease," which is defined in sect. 60 of the Act (*k*) as any infectious disease named in sect. 6 of the Act of 1889, and any other infectious disease to which the Minister may by order apply the relevant sections of the Act of 1925, either generally or locally. In this connection, therefore, a dangerous infectious disease is much the same thing as an infectious disease for the purposes of the Acts of 1890 and 1907. Diseases other than those named in the Act of 1889 must, however, be specified by order of the M. of H., and a local authority have no power of themselves to add to

(*g*) 13 Statutes 813.

(*h*) Infectious Disease (Prevention) Act, 1890, s. 2; 13 Statutes 810.

(*i*) Act of 1907, s. 13; 13 Statutes 915.

(*k*) 13 Statutes 1141

the list as they have under the earlier Acts. The provisions of the Isolation Hospitals Acts, 1898 and 1901 (*l*), apply only to the diseases mentioned in the Act of 1889, unless they are extended by the county council by order to other infectious diseases (*m*). With special reference to the carriage of infection by milk, Art. 2 of the Milk and Dairies Order, 1926 (*n*), defines "infectious disease" as dysentery and any infectious disease to which the Act of 1889 applies. As regards the spread of infection by home-workers, "infectious diseases" are defined in sect. 110 (*o*) of the Factory and Workshop Act, 1901 (*o*), as being those which are required to be notified under the law for the time being in force, a description which would appear to include diseases made notifiable by regulations of the Minister (*post*, p. 209) as well as by the Act of 1889. [415]

The phrase "epidemic, endemic or infectious disease," for the prevention and treatment of which the M. of H. has power to make regulations (*p*), permits of a much wider interpretation, and this power has been used to impose specific duties upon local authorities and persons, including notification, in relation to diseases most of which are not mentioned in the Act of 1889. Such regulations may themselves contain a definition of infectious disease. For instance, Art. 2 of the Port Sanitary Regulations, 1933 (*q*), defines "infectious disease" as any epidemic or acute infectious disease, but does not include venereal disease, and regulations conferring power on a county council to provide isolation hospitals and treat infectious disease may apply a wide meaning to the term (*r*). In regulations relating to cerebro-spinal fever and acute poliomyelitis (*s*), local authorities are given the same powers as they have under the P.H.As. and the Infectious Disease (Prevention) Act, 1890, as to diseases notifiable under the Act of 1889, so that these two diseases may be regarded, for practical purposes, as added to the list of infectious diseases named in the last-mentioned Act.

The general effect of this diversity of definition may be taken to be that, where the expression "infectious disease" is used without definition, it is probably safe to assume that a disease notifiable in terms of the Infectious Disease (Notification) Act, 1889, is meant. This interpretation, however, is subject to at least one exception. County or county borough councils are under no obligation to recover the cost of hospital treatment of infectious disease from patients or their relatives (*t*), and it is assumed by the M. of H. and local authorities that the expression, as used in this connection, includes all acute infectious diseases whether notifiable by Act or regulation or not notifiable, and as including, for instance, tuberculosis and venereal disease.

The difficulty as to the meaning to be attached to the words "infectious disease" is of more than theoretical interest, since it would appear that even if sects. 52 to 68 of the Act of 1907 were in force in an area, these powers for controlling the spread of infection cannot be

(*l*) 18 Statutes 862, 888.

(*m*) Isolation Hospitals Act, 1893, s. 26; 13 Statutes 869.

(*n*) S.R. & O., 1926, No. 821. Printed at p. 3576 of Lumley's Public Health, 10th ed.

(*o*) 8 Statutes 574.

(*p*) P.H.A., 1875, s. 130. See also s. 134; 13 Statutes 678, 680.

(*q*) S.R. & O., 1933, No. 88.

(*r*) E.g. the County of Carmarthen (Prevention and Treatment of Infectious Disease) Regulations, 1927 (S.R. & O., 1927, No. 60), in which infectious disease "does not include smallpox or tuberculosis."

(*s*) The Public Health (Cerebro-spinal Fever and Acute Poliomyelitis) Regulations, 1912; S.R. & O., 1912, No. 1226.

(*t*) L.G.A., 1929, s. 16 (1); 10 Statutes 899.

applied in connection with such a disease as plague, since it is not one of the diseases to which the Act of 1889 applies, although the powers and duties of the local authority in relation to its notification are identical (*u*). [416]

Responsible Authorities.—The powers and duties in relation to infectious disease rest, in the first instance, principally upon borough and district councils and port sanitary authorities. Regulations of the M. of H. for the prevention and treatment of infectious disease (*a*) may state by what authorities they are to be executed and a county council, if they consent, may be declared to be an authority for the purpose (*b*). It has been usual, for instance, when power has been conferred by regulations on a county council to provide isolation hospitals, to invest them also with the powers contained in sects. 121 to 124 of the P.H.A., 1875 (*c*). [417]

A non-county borough or district council may also transfer their powers and duties in relation to infectious disease by agreement to the county council (*d*), or, if they have defaulted in the execution of these powers and duties the M. of H. may transfer them to the county council after holding a local inquiry and giving the council an opportunity to discharge the functions within a limited time (*e*). As to Isolation Hospitals, see that title. As to spread of infection by midwives, see *post*, p. 242. [418]

NOTIFICATION

In order that local authorities may carry out their function of preventing the spread of infectious disease, it is essential that they should have knowledge of its occurrence. This is provided by notification. Certain infectious diseases are notifiable throughout the whole country, while others are notifiable locally, usually on the initiative of the local authority. The diseases which are generally notifiable (*vide* Table I., *post*, p. 248) may be divided into two main groups, viz. those which have to be notified under the Infectious Disease (Notification) Act, 1889, and those governed by regulations of the M. of H. [419]

Diseases Notifiable under the Act of 1889.—By sect. 6 of the Act of 1889 (*f*), which was applied to every part of the country by sect. 1 of the Amending Act of 1899 (*g*), certain diseases were made notifiable, viz. smallpox, cholera, diphtheria, erysipelas, scarlet fever, typhus fever, typhoid fever, relapsing fever and puerperal fever, all of which can be separately and distinctly identified as disease-entities; membranous croup, which is a designation of a form of diphtheria now seldom used; the group of diseases usually called enteric fever which includes typhoid fever; and continued fever, the meaning of which is obscure, but which was probably intended to include the other fevers mentioned above in cases where the exact type of fever was obscure, and might

(*u*) Epidemic Regulations: Notification of Plague (General), 1900 (S.R. & O., 1900, No. 695). Printed on p. 3115 of Lumley's Public Health, 10th ed.

(*a*) P.H.A., 1875, s. 130; 13 Statutes 678.

(*b*) P.H. (Prevention and Treatment of Disease) Act, 1913, s. 2; 13 Statutes 958.

(*c*) *E.g.* County of Carmarthen (Prevention and Treatment of Infectious Disease) Regulations, 1927; S.R. & O., 1927, No. 69.

(*d*) L.G.A., 1929, s. 57 (2); 10 Statutes 922.

(*e*) *Ibid.*, s. 57 (3).

(*f*) 13 Statutes 813.

(*g*) *Ibid.*, 879.

include such diseases as undulant fever (*vide* Table III., *post*, p. 255). A local authority or port sanitary authority may, however, extend this list within their own area, and this has frequently been done. For instance, when smallpox is prevalent in any area, it is customary to extend the Act to chickenpox because of the frequency with which cases of smallpox are mistaken for the latter disease. Similarly, if the local authority consider that their control over such diseases as measles, German measles, whooping cough, infective diarrhoea, acute rheumatism, yellow fever, anthrax, glanders, rabies, etc., would be more effective if they were furnished with prompt information as to their occurrence, they may extend the Act to one or other of these diseases. The procedure permits of the addition of a disease to the list contained in the Act either as a permanent or temporary measure, by methods which vary according to the urgency of the circumstances. It should be noted that the disease must be one which is generally recognised as infectious. For instance, the provisions of the Act cannot be extended to cancer since there is no evidence, so far, that it is an infectious disease. On the other hand, acute rheumatism, which is widely believed to be infectious, might be dealt with in this way, although there is advantage in obtaining local notification by means of regulations of the M. of H. (*post*, p. 210). [420]

The procedure for extending the Act of 1889 is set out in sect. 7 (*h*). Special notice must be given, at least fourteen clear days beforehand, of the meeting of the authority at which the matter is to be considered, and they may by resolution make an order that the Act shall apply to the disease in question (*i*). The order may be permanent or for a limited time, to be specified in it, and in either case it may be revoked or varied by the authority at any time, but neither an order nor its revocation or variation is valid until it has received the approval of the Minister. As soon as approval is obtained, public notice of the order must be given in the local press, and by handbills and otherwise, and all medical practitioners in the area must be furnished with a copy. The names and addresses of practitioners may be obtained from the medical directory and local directories, in so far as the list already in the possession of the authority for the payment of fees for notification (*post*, p. 212) and other purposes may be considered incomplete. The disease becomes notifiable under the Act at a date to be fixed by the authority, but not sooner than one week after the first advertisement has appeared.

This is the ordinary course to be followed by an authority if they decide to require notification of a common infectious disease which is not creating any special emergency. If, however, as sometimes happens in the case of chickenpox during an epidemic of smallpox, the matter is urgent, a temporary order may be made more expeditiously. The method of doing this is provided in sect. 7 (*g*), (*h*) of the Act. Only three clear days' notice of the meeting is required. The order, which must state the cause of the emergency, may, if sent immediately to the M. of H. and advertised at the same time, be brought into force after the lapse of a week from the date of advertisement. If the M. of H.

(h) 18 Statutes 814.

(i) The requirement of fourteen days' notice is contained in s. 5 of the Act, which is applied by s. 7 (1), and the repeal of s. 5 does not seem to affect the requirement. For forms of order, see *Encyclopædia of Forms and Precedents*, Vol. XII, pp. 216—221.

withholds approval, the order ceases to be in force after one month after it was passed, unless an earlier date is fixed by the Minister. If approved, the order remains in force for the time specified in it, and the fact that it has been approved is conclusive evidence that the authority's action was justified by an emergency. An emergency order is usually made for a period of six months or one year. The necessity for its renewal can usually be foreseen some time before the date of its termination and can be secured by the ordinary non-emergency procedure. [421]

Diseases Notifiable by Regulation.—Power is given to the M. of H. by sects. 130 and 134 of the P.H.A., 1875 (*k*), to make regulations for the prevention and treatment of epidemic, endemic or infectious disease and to declare the authorities by whom they are to be executed. The power afforded by sect. 130 is general and capable of a very wide interpretation; sect. 134 refers to occasions when *any part* of England is threatened with a *formidable* disease of this nature, and the purposes for which regulations may be made are more clearly indicated, although the phrase "for guarding against the spread of disease" leaves the M. of H. much latitude as to the provisions which are admissible. No regulations under sect. 134 seem to be in force. Most of the existing regulations are based generally on the powers conferred on the M. of H. by the P.H.A., 1875, or specifically on those contained in sect. 130. Publication in the *London Gazette* is made obligatory by sect. 135, and supplies conclusive evidence of the regulations.

This power has been used by the M. of H. to enforce notification of a number of acute diseases, viz. plague, cerebro-spinal fever, acute poliomyelitis, acute encephalitis lethargica, acute polio-encephalitis, ophthalmia neonatorum, puerperal pyrexia, malaria, dysentery, acute primary pneumonia and acute influenzal pneumonia, as well as tuberculosis (see title TUBERCULOSIS). These diseases, individually or in groups, are covered by a number of regulations (*l*). For convenience of reference the diseases, the regulations which govern them and certain responsibilities in relation to them are set out in Table I. (*post*, p. 248). It should be noted that the designation "acute primary pneumonia" is not recognised in medical nomenclature as a description of a definite disease and its meaning has not been defined, but it is assumed to include lobar pneumonia and any form of acute bronchopneumonia which is not secondary to other disease. Similarly, puerperal pyrexia is a combination of words merely implying a febrile state following upon child-birth and is not a disease in the strict sense of the term; certainly some of the febrile states thus made notifiable are not due to infection, but their inclusion would appear to be permitted by the mention of endemic, as an alternative to infectious, disease in sect. 130 of the Act of 1875. The word "endemic" appears alone in the titles of regulations making acute rheumatism notifiable (*infra*). Exception is made for persons who have been deliberately infected with malaria as a part of medical treatment in an institution (usually for general paralysis of the insane). Such persons need be notified only if there is probability of relapse after discharge (*post*, p. 210) (*m*).

(*k*) 13 Statutes 678, 680.

(*l*) These regulations, except those made after 1928, are printed in Vol. III. of Lumley's Public Health, 10th ed., under the head of "Cholera, Yellow Fever and Plague," or "Diseases and Hospitals."

(*m*) Public Health (Infectious Diseases) Regulations, 1927, Art. 5.; S.R. & O., 1927, No. 1004.

Under the above powers, the M. of H. may make regulations enforcing notification of a particular disease within the area of one local authority. The method is specially appropriate to diseases the notification of which may conveniently be confined to cases occurring among certain persons, such as primary cases of measles in families, or acute rheumatism affecting persons up to a certain age (*n*). The procedure laid down by the Act of 1889 does not lend itself to such forms of selective notification, and such regulations are usually made by the M. of H. at the request of the local authority, who are required to show that they possess a satisfactory organisation for dealing with the disease and are prepared to utilise it (*o*). [422]

Notification under Local Act.—Many of the diseases now generally notifiable were formerly made so locally under powers obtained by local Acts. Diseases like food-poisoning, only a proportion of the cases of which are of infectious origin, are still usually the subject of notification by this means. An example of the relevant section of a local Act is given in the Appendix (*post*, p. 256). [423]

When and by whom Notices must be Sent.—The medical practitioner in attendance is required to notify patients suffering from any of the diseases to which the Act of 1889 applies, or is applied, or in the regulations above-mentioned. With the exception of one disease, he must notify forthwith on becoming aware that a person is suffering from the disease. The exception is tuberculosis, notification of which may be delayed up to forty-eight hours after a diagnosis is reached (*p*). Cases of infectious disease to which the Act of 1889 applies (*q*), and of plague, cerebro-spinal fever, acute poliomyelitis, acute encephalitis lethargica and acute polio-encephalitis, occurring in a hospital for infectious disease, need not be notified, but this exemption does not apply to ophthalmia neonatorum, puerperal pyrexia, malaria, dysentery, acute primary pneumonia or acute influenzal pneumonia (*r*). An institutional medical officer responsible for the infection of a patient with malaria as a therapeutic measure must notify on the discharge of the patient from the institution, if the patient is liable to suffer from relapses of malaria, notification being sent at least four days before the patient is due to be discharged (*s*). Special obligations rest upon institutional and school medical officers in relation to the notification of tuberculosis (*t*). (See title TUBERCULOSIS.) [424]

Other persons responsible for notifying infectious disease are enumerated in sect. 3 of the Act of 1889 as follows: (1) the head of the family to which the patient belongs; (2) in his default the nearest relatives present in the building or in attendance on the patient; (3) in default of such relatives, every person in charge of or in attendance on

(*n*) *E.g.* The Walthamstow (Measles) Regulations, 1932 (S.R. & O., 1932, No. 81, price 1d.), also the regulations in force in the metropolitan borough of Holborn (S.R. & O., 1932, No. 993).

(*o*) M. of H. circular ("Measles and German Measles"), November 28, 1919, para. 3.

(*p*) Public Health (Tuberculosis) Regulations, 1930, Art. 5; S.R. & O., 1930, No. 572; 23 Statutes 447.

(*q*) Act of 1889, s. 3; 13 Statutes 812.

(*r*) See appropriate regulations referred to in Table I. (*post*, p. 248).

(*s*) Public Health (Infectious Diseases) Regulations, 1927, Art. 5; S.R. & O., 1927, No. 1004. Printed at p. 8177 of Lumley's Public Health (10th ed.).

(*t*) Public Health (Tuberculosis) Regulations, 1930, Art. 5; S.R. & O., 1930, No. 572; 23 Statutes 447.

the patient; and (4) in default of any such person the occupier of the building. The obligation on these persons to notify holds for all the diseases to which the Act of 1889 applies or is applied, *i.e.* to the diseases mentioned in the Act or to which the Act has been extended locally (*ante*, p. 208) and plague, cerebro-spinal fever and acute poliomyelitis (*u*). It should be noted that the duties of the medical practitioner and the relatives or occupier are not mutually exclusive. Little attempt, however, has been made to enforce the obligation upon lay persons, since their notice serves no useful purpose, if a medical practitioner has already notified, and, in the absence of a medical practitioner, they can hardly be expected to recognise an infectious disease. Nevertheless, if a local authority have obtained power to make a disease notifiable the character of which is usually obvious, and for which medical advice may often not be sought in their area (*e.g.* measles or whooping cough), it may be necessary to enforce the legal obligation upon the head of the family.

Under the Act of 1889 and the various regulations above-mentioned inmates of premises belonging to the Crown are exempt from the duty of notification, but sect. 5 (b) of the L.G. (Emergency Provisions) Act, 1916 (*a*), as applied to the Royal Air Force by the Air Force (Application of Enactments) (No. 2) Order, 1918 (*b*), places the obligation of notification on a medical officer who is in attendance upon any inmate of premises in the occupation of any of H.M. Forces, who is suffering from a disease to which the Act of 1889 or any regulations apply.

Except in cases of cerebro-spinal fever, acute poliomyelitis, acute encephalitis lethargica, acute polio-encephalitis and tuberculosis, knowledge of previous or contemporaneous notification by another medical practitioner does not relieve a practitioner of his duty to notify. As regards tuberculosis, a practitioner *must not* notify a case if he has reason to believe that it has already been notified in the district (*c*).

For notices to be given by milk vendors, midwives, masters of ships, masters of canal boats, keepers of lodging-houses and occupiers of tents, vans and sheds, see the appropriate sub-titles of this article. [425]

Form and Delivery of Notification.—The form of notification to be used by medical practitioners for most of the notifiable diseases is uniform, and is prescribed in Sched. A. to the P.H. (Notification of Infectious Disease) Regulations, 1918 (*d*). In addition to the name and address of the patient and the disease from which he is suffering, the age and sex and the date of onset of symptoms must be stated. Additional information is required in relation to cases of tuberculosis as to the localisation of the disease, the occupation and the usual place of residence (*e*); in cases of ophthalmia neonatorum, as to the date of birth of the child and the name and address of the parent or person in

(*u*) See appropriate regulations referred to in Table I. (*post*, p. 248).

(*a*) 10 Statutes 854. Made permanent by the Expiring Laws Act, 1925.

(*b*) S.R. & O., 1918, No. 548.

(*c*) Public Health (Tuberculosis) Regulations, 1930, Art. 5; S.R. & O., 1930, No. 572; 23 Statutes 447.

(*d*) S.R. & O., 1918, No. 67.

(*e*) Public Health (Tuberculosis) Regulations, 1930, Art. 5; S.R. & O., 1930, No. 572; 23 Statutes 447.

charge of him (*f*); in cases of puerperal fever and puerperal pyrexia as to the usual place of residence of the patient, whether married or single, the probable cause of pyrexia, the date of birth of the child, and whether assistance is required in diagnosis and treatment (*g*); in cases of malaria, therapeutically induced in an institution and liable to relapse, the name of the institution, the proposed place of residence, the date of discharge, the date of induction of malaria and a brief history of its course and treatment (*h*).

Notification must be made in the prescribed form and may be delivered to the M.O.H. of the district in person or handed in at his residence or office or sent by post (*i*). A telephone or personal message, while of the greatest value in expediting administrative action, does not exonerate a medical practitioner from sending a notification on the appropriate form duly signed. The authority must provide practitioners with supplies of forms for the purpose (*k*). The notification must either be enclosed in a sealed envelope or folded in such a manner that its contents cannot be read (*l*). Notification is to be made to the M.O.H. of the area in which the patient is actually residing at the time, in the case of every disease but therapeutically induced malaria, which has to be notified to the M.O.H. of the area where the patient intends to reside after discharge from the institution at which he has undergone this form of treatment (*m*), and tuberculosis occurring in an institution, which is notified to the M.O.H. of the area where the patient usually resides (*n*). [426]

Fees for Notification.—By sect. 4 of the Act of 1889 (*o*), and the various regulations under which diseases are made notifiable, the local authority must pay for each notification made by a medical practitioner a fee of 2s. 6d., if the case occurs in his private practice, and 1s. if it occurs in his practice as medical officer of a public body or institution (*p*). The M. of H. consider that practitioners should not be required to submit accounts, and regulations made by the M. of H. in 1926 and later years have debarred authorities from making such a demand, placing the further obligation upon them of paying fees as soon as practicable after the end of the quarter during which notifications are sent to them. There is no legal decision which shows what is meant by "a public body or institution" but the expression is usually considered to cover any organisation which provides medical treatment for patients without making a charge which includes a profit, such as a voluntary or council hospital or the public assistance out-patient

(*f*) Public Health (Notification of Ophthalmia Neonatorum) Regulations, 1926 and 1928; S.R. & O., 1926, No. 971; and 1928, No. 419.

(*g*) Public Health (Notification of Puerperal Fever and Puerperal Pyrexia) Regulations, 1926 and 1928; S.R. & O., 1926, No. 972; and 1928, No. 420.

(*h*) Public Health (Infectious Diseases) Regulations, 1927; S.R. & O., 1927, No. 1004.

(*i*) Infectious Disease (Notification) Act, 1889, s. 8; 18 Statutes 814. See also S.R. & O., 1926, No. 972, and 1927, No. 1004.

(*k*) *Ibid.*, s. 4; 18 Statutes 818. See also S.R. & O., 1926, No. 972; and 1927, No. 1004.

(*l*) Public Health (Notification of Infectious Disease) Regulations, 1918; S.R. & O., 1918, No. 67. See also S.R. & O., 1926, No. 972; and 1927, No. 1004.

(*m*) Public Health (Infectious Diseases) Regulations, 1927; S.R. & O., 1927, No. 1004.

(*n*) Public Health (Tuberculosis) Regulations, 1930, Art 6; S.R. & O., 1930, No. 572; 23 Statutes 447.

(*o*) 18 Statutes 813.

(*p*) For diseases not notifiable from isolation hospitals, see *ante*, p. 210.

medical service. Sect. 5 of the L.G. (Emergency Provisions) Act, 1916 (*ante*, p. 211), provides that a fee of 1s. is also payable to any medical practitioner, not being a commissioned medical officer, in attendance on a member of H.M. forces, for a notification made and transmitted under that Act. A special scale of fees is provided for weekly lists of cases of tuberculosis admitted and discharged from poor law institutions or sanatoria (*g*). (See title TUBERCULOSIS.)

Sect. 59 of L.G.A., 1933 (*r*), has been framed in such a way as not to disqualify a medical practitioner by the receipt of fees for notifications from serving as a member of a county council, or borough, district or parish council, and a part-time M.O.H. is entitled to fees for notifications made as the medical attendant, which would otherwise be due to him (*s*). [427]

M.O.H. to Transmit Information.—It is the duty of the M.O.H. to send to the M. of H. promptly at the end of each week a statement in the prescribed form showing the number of notifications received up to the Saturday night (*t*). By arrangement, these returns, in post-card form, are sent direct to the Registrar-General. At the same time, a duplicate must be sent by the M.O.H. to the county M.O.H. In addition to these returns, a copy of every notification of ophthalmia neonatorum (*u*), puerperal fever or puerperal pyrexia (*a*) must be sent to the county M.O.H. within twenty-four hours of its receipt, and a weekly statement giving all the particulars contained on notifications of tuberculosis received must be likewise transmitted (*b*). Notifications of tuberculosis, malaria, dysentery and pneumonia wrongly addressed to him must be forwarded by the M.O.H. to the M.O.H. of the correct district and the medical practitioner informed that this has been done (*c*), but it is the practice of medical officers of health to transfer to their correct destination notifications of any disease which have been sent to them in error. Cases of plague, cholera and smallpox, serious outbreaks of any disease notified or discovered (*d*), and cases of typhus fever and indigenous malaria must be similarly reported forthwith to the M. of H. and the county medical officer (*e*). As to persons arriving on infected ships, see sub-title "Infectious Disease in Ships" (*post*, p. 227 at p. 233). [428]

Penalty for Failure to Notify.—A person, whether he be a medical practitioner or one of the other parties mentioned in sect. 3 of the Act of 1889 (*f*), who fails to notify a case of infectious disease is liable to a

(*g*) Public Health (Tuberculosis) Regulations, 1930, Art. 9; S.R. & O., 1930, No. 572; 23 Statutes 448.

(*r*) 26 Statutes 834.

(*s*) Act of 1889, s. 11; 13 Statutes 815.

(*t*) Sanitary Officers (Outside London) Regulations, 1935, Art. 17 (3); S.R. & O., 1935, No. 1110.

(*u*) Public Health (Notification of Ophthalmia Neonatorum) Regulations, 1926, Art. 8; S.R. & O., 1926, No. 971.

(*a*) Public Health (Notification of Puerperal Fever and Puerperal Pyrexia) Regulations, 1926, Art. 5; S.R. & O., 1926, No. 972.

(*b*) Public Health (Tuberculosis) Regulations, 1930, Art. 10 (7); S.R. & O., 1930, No. 572; 23 Statutes 449.

(*c*) *Ibid.*, Art. 10 (1); S.R. & O., 1930, No. 572 (23 Statutes 448), and Public Health (Infectious Diseases) Regulations, 1927, Art. 9; S.R. & O., 1927, No. 1004.

(*d*) Sanitary Officers (Outside London) Regulations, 1935, Art. 17 (7); S.R. & O., 1935, No. 1110.

(*e*) Public Health (Infectious Diseases) Regulations, 1927, Sched. I; S.R. & O., 1927, No. 1004.

(*f*) 13 Statutes 812.

fine not exceeding 40s. But a person whose duty arises only on the default of another person is not liable to a fine if he had reason to believe that the other person had notified the case—e.g. a remote relative or the occupier of the premises who thought that the head of the family had reported the case, would not be liable, but, on the other hand, the person primarily responsible is not exonerated because he left notification to another person. But, as already indicated, little importance is now attached to lay notifications.

The penalty for failure to comply with the duty to notify a disease imposed by regulations of the Minister is on a very different scale. It will be remembered that this duty rests exclusively upon medical practitioners except in the case of plague, cerebro-spinal fever and acute poliomyelitis. The penalty is governed by sect. 1 (3) of the P.H.A., 1896 (*g*), which provides that any person who "wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under sect. 130 or 134 of the P.H.A., 1875," is liable to a penalty not exceeding £100, and in the case of a continuing offence to a further penalty of £50 a day during which the offence continues. The maximum penalty attaching, therefore, to a neglect to notify, say, puerperal pyrexia seems out of proportion to that for a similar offence in relation to smallpox. [429]

Non-Notifiable Infectious Disease.—As indicated previously (sub-title "Infectious Disease in Law," *ante*, p. 206) local authorities are not concerned solely with infectious diseases which are notifiable, although most of their powers and duties are directed toward this group of diseases. The M.O.H. must report to the M. of H. and county medical officer any serious outbreak of disease (*h*), a duty which implies that he will investigate such an outbreak. The disease may be, for instance, food-poisoning or septic sore throat, which may be the result of infection, but may not be notifiable in the district. It must be remembered that any of these diseases may be made notifiable by one or other of the methods already described (*ante*, pp. 207-210).

Lists of infectious diseases not generally notifiable are given in Tables II. and III. (*post*, pp. 255, 256). These lists are not intended to be exhaustive, but include both the commoner diseases in this class and also those which, although of rare occurrence in this country, are most likely to give concern to the M. of H. and local authorities if a case should arise. In so far as these diseases affect school children, principally, that is to say, as regards measles, German measles, whooping cough, chickenpox, mumps, itch, pediculosis and ringworm, the local education authority should arrange for intimations to be sent by teachers and school attendance officers to the school medical officer (*i*), and, if the M.O.H. is a different person, he should also be informed in order that he may be able to deal with other members of the family who are not scholars, if such action is necessary (*k*). The diseases mentioned in Table III. are rarely transmitted from man to man, but not infrequently from animals to man, either directly or indirectly by contaminated hair, hides, filth or dust, or by the consumption of the milk of infected animals. For these reasons, certain diseases occurring in

(*g*) 13 Statutes 872.

(*h*) Sanitary Officers (Outside London) Regulations, 1935, Art. 17 (7); S.R. & O., 1935, No. 1110.

(*i*) M. of H. and Board of Education Memorandum on Closure of and Exclusion from School, p. 11, para. 24.

(*k*) *Ibid.*, p. 13, para. 32.

animals, viz. glanders, rabies and anthrax, when coming to the knowledge of local inspectors under the Diseases of Animals Acts (see title DISEASES OF ANIMALS), must be notified to the M.O.H. (1). A case of anthrax in a human being employed in a factory or workshop must be notified to H.M. Inspector of Factories both by the medical practitioner in attendance and by the employer (1). It is customary, however, for medical practitioners to draw the attention of the M.O.H. to the occurrence in a human being of any grave infectious disease which they are under no statutory obligation to notify to him, and to consult him as to any other action which the practitioner proposes to take. Such cases may also be brought to the notice of the M.O.H. by members of the public or of the council, or by the police or the coroner, by whom all deaths from food-poisoning, for instance, must be investigated. It frequently happens that full and scientific investigation of individual cases or outbreaks of non-notifiable disease can be carried out only by, or with the assistance of, the M.O.H. and, indeed, it is usually following upon such inquiries that proposals are made to a local authority and the M. of H. for adding a disease to the list of those which are notifiable in the area. [430]

MEASURES TO BE ADOPTED

Epidemiological Inquiries and Records.—The object of notification is not merely the acquisition of data for statistical reports, but also the taking of practical measures for the prevention of the spread of infection. The receipt of a notification, therefore, should be followed by an investigation made by an officer of the health department, who may be the sanitary inspector or a special inspector (sometimes called an epidemic inspector) or a health visitor, or, in exceptional circumstances, the M.O.H. or one of his medical assistants. The facts to be ascertained vary according to the nature of the disease and the mode of its dissemination, but usually will include the patient's full name, the sex, age, place of residence, nature and place of occupation (or if a child the school which he attends, including, if possible, the class or the teacher's name), date of last attendance at work or at school, date of onset of disease, the patient's movements when he was probably infected, names of any children in the house, the school attended if they are scholars, history of recent illness in the house, recent return of any case from hospital to the house, whether homework is done in the house, whether any books have been obtained from libraries, the source of the milk supply (if the disease is one which may be conveyed by milk), the result of any bacteriological or immunological examinations and the dates of removal to hospital and disinfection, or, if the patient remains at home, the name of the medical practitioner in attendance. In cases of diphtheria, inquiries should be made as to the administration of anti-toxin before admission to hospital and whether the patient has been immunised. In alimentary infections, such as typhoid, paratyphoid, dysentery and food-poisoning, the dietary at the probable time of infection should be inquired into. It is convenient to record these particulars on cards of a special colour for each common infectious disease. In practice, the association of patients with a school or a particular milk-supply requires special attention, and, in urban administration at least, such association may fail to be detected quickly if

(1) See last column of Table III., *post*, p. 255.

cases in different localities are investigated by different officers. The records should therefore be scrutinised by one officer, and it is convenient for this purpose to have the essential facts relating to one disease transferred to sheets for an area, so selected as to include most of the children attending particular schools, but not too big to obscure any connection of cases with a school or milk supply throughout a period of about a fortnight.

It is not customary for the M.O.H. or his medical assistants to see all patients notified in order to verify the diagnosis. A notification of one of the common infectious diseases is considered valid evidence of the disease, unless cancelled by the medical practitioner who is responsible for it. Patients, however, who are sent to an isolation hospital should be medically examined before admission to a ward in order to avoid cross-infection, and any alteration of diagnosis then made should be transmitted to the M.O.H. Medical practitioners frequently invite the M.O.H. to see a patient in consultation before notifying him. Further, when any unusual disease invades a district, *e.g.* smallpox or typhus fever, the M.O.H. usually visits any case notified since specially stringent administrative measures may have to be taken and these would be unnecessary if the diagnosis is not correct. [481]

Control over Patients and their Homes.—One of the first considerations arising when a case of infectious disease comes to the notice of the public health department is the control of the movements and entourage of the patient, in order to restrict his contact with other persons and so diminish the risk of the spread of infection. The law places certain obligations upon the patient himself or the person in charge of him. If he is suffering from a dangerous infectious disorder (*ante*, p. 205) he must not wilfully expose himself without taking proper precautions to prevent its spread, in any street, or public place, or shop, or enter a public conveyance (*post*, p. 223) without informing the owner or the conductor or the driver of his condition, and the same duty rests upon any person in charge of the patient (*m*). The sale, transmission or exposure of a thing infected by such a disorder is also an offence unless the thing has been disinfected (*n*). In areas to which sect. 62 of P.H.A. Amendment Act, 1907 (*o*), has been applied, the liability of the person in charge of a patient extends, beyond actual exposure, to causing or permitting such exposure, but no attempt is made to elucidate the meaning of the expression "dangerous infectious disorder," though in sect. 18 of the Act (*p*) "infectious disease" is defined as meaning any infectious disease to which the Act of 1889 for the time being applies. No person who knows that he is suffering from an infectious disease may engage in any occupation, or carry on any trade or business unless he can do so without risk of spreading the disease (*q*), and a parent or guardian may not allow an infectious child to attend school after a notice to that effect has been served by the M.O.H. until a certificate of freedom from infection has been obtained from him (*r*). The risk of infection from public vehicles is further

(*m*) P.H.A., 1875, s. 126 (1), (2); 18 Statutes 676.

(*n*) *Ibid.*, s. 126 (8).

(*o*) 13 Statutes 984.

(*p*) *Ibid.*, 915.

(*q*) P.H.A. Amendment Act, 1907, s. 52; 13 Statutes 980. This and the sections of the Act mentioned later must have been put in force by order of the M. of H.

(*r*) *Ibid.*, s. 57.

reduced by the absolute prohibition on a person suffering from infectious disease from entering a vehicle for carrying passengers at separate fares (e.g. an omnibus) by making it an offence for the owner or driver of such a vehicle knowingly to convey a case of infectious disease, and by requiring the owner or driver of any public vehicle to have it disinfected after such a person has been conveyed in it (*s*). Infected clothing may not be sent to a laundry without previous disinfection (*t*). Similarly any book which has been unwittingly exposed to infectious disease must be handed over to the local authority to be dealt with appropriately, and no person knowing that he is suffering from infectious disease may take or use a library book, nor may any other person who has taken out such a book allow the patient to use it (*u*).

By sects. 109, 110 of the Factory and Workshop Act, 1901 (*a*), further provision is made for the prevention of the transmission of infection by out-workers. It is an offence for the occupier of a factory or workshop, or any of his contractors, knowingly to allow any wearing apparel to be made, cleaned or repaired in a house where there is scarlet fever or smallpox (*a*); and a local authority may make an order prohibiting such persons from giving out any out-work to houses in which notifiable disease (*ante*, p. 206) exists or has occurred (*a*). Persons who have suffered from enteric fever or dysentery may, on the report of the M.O.H., be prohibited by notice of the local authority from engaging in any occupation involving the handling or preparation of food or drink, and the notice may prescribe other measures for preventing spread of the disease (*b*). A sanitary authority or any two members acting on the advice of the M.O.H. may close a school or exclude children because of infectious disease (*c*), and the local education authority may, on the advice of the school medical officer, either close a school for medical reasons or exclude children to prevent the spread of disease or because of uncleanness (*d*). So far as an education authority are concerned, there is no distinction between notifiable and other infectious diseases. Further measures of control over dairymen and workers are dealt with later (*post*, pp. 237, 238, 239). [432]

Isolation of Patients.—The measures just mentioned, while they provide some means of preventing the spread of infection from patients, do not amount to effective isolation. The law provides no direct means of enforcing isolation otherwise than in hospital (except for persons on ships, *post*, pp. 231—2, 234), but the power of compulsory removal to hospital may be used to ensure that those patients desiring to remain at home, or whose parents wish them to do so, are properly isolated. This power is contained in sect. 124 of the P.H.A., 1875 (*e*), as amended by sect. 65 of the P.H.A. Amendment Act, 1907 (*f*), in areas to which this section has been applied. It can be used only for infectious diseases which are "dangerous," and its application depends upon the existence

(*s*) P.H.A. Amendment Act, 1907, ss. 63, 64; 13 Statutes 934.

(*t*) *Ibid.*, s. 55; 13 Statutes 931.

(*u*) *Ibid.*, s. 59.

(*a*) 8 Statutes 574. See also S.R. & O., 1911, No. 304; 1912, No. 158; and 1913, No. 91, extending s. 110 to other classes of work.

(*b*) Public Health (Infectious Diseases) Regulations, 1927, Sched. I., Part III.; S.R. & O., 1927, No. 1004.

(*c*) Code of Regulations for Public Elementary Schools, 1926; S.R. & O., 1926, Art. 22.

(*d*) *Ibid.*, Arts. 20 (*b*), 23.

(*e*) 13 Statutes 875.

(*f*) *Ibid.*, 935.

in, or conveniently near, the district of a hospital whose managers are willing to receive the patient. In the Act of 1875, the home conditions pursuant upon which action may be taken consist of lack of proper lodging or accommodation, or lodging of the patient in a room occupied by more than one family; but sect. 65 of the Act of 1907 is more broadly worded, and covers residence in any house or premises where the patient cannot be effectually isolated so as to prevent the spread of the disease. On a certificate of any duly qualified medical practitioner testifying to the nature of the disease and to the fact that the above-mentioned conditions exist (*g*), a magistrate may make an order for compulsory removal to hospital (*h*). In practice the medical certificate is almost always given by the M.O.H. If the patient is an inmate of a common lodging-house, sect. 124 allows an order to be made by the local authority, on a like certificate, without resort to a magistrate. For the power of the M.O.H. himself to remove patients from ships without an order, see *post*, p. 234. While there is nothing to prevent the M.O.H. preparing a draft order and presenting it directly to a magistrate, it is desirable, if time permits, that the form of certificate and order should be submitted to the clerk of the council for his approval, and that the arrangements for making the order should be conducted through the magistrates' clerk. A magistrate's order is usually addressed to a police constable, and it is therefore courteous to consult the chief constable of the area as to its enforcement before it is made. [438]

In areas for which sect. 12 of the Infectious Disease (Prevention) Act, 1890 (*i*), has been adopted, a patient in hospital who is suffering from any infectious disease (usually a patient admitted because of that disease and not yet free from infection) may also be detained under a magistrate's order. The diseases to which this power extends are the notifiable diseases to which the Act of 1889 applies, or any others to which the Act of 1890 has been applied by resolution of the council with the approval of the Minister (*k*). Under sect. 12, evidence is necessary that the home accommodation is such that proper precautions could not be taken for preventing the spread of the disease on the patient leaving the hospital, and, although a certificate is not required, the procedure may appropriately be initiated by a certificate of the M.O.H. or hospital superintendent stating the nature of the disease and the fact that isolation at home is impracticable. If the magistrate is satisfied that proper grounds are shown, he may make an order for detention in the hospital, armed with which any officer of the local authority, or of the hospital, or an inspector of police for the district may take forcible measures to prevent the patient's departure. An order may be limited in time but may be renewed by any magistrate having jurisdiction in the area. Throughout the duration of the order the local authority may not make any charge for the patient's maintenance in the hospital.

A patient in a workhouse (including a poor law hospital) who is suffering from infectious or contagious disease, and whose parent or next-of-kin cannot satisfy the council that proper care and attention can be provided for him elsewhere, may be detained without a magis-

(*g*) For form of certificate, see *Encyclopædia of Forms and Precedents*, Vol. XII., p. 227.

(*h*) For form of order, see *Encyclopædia of Forms and Precedents*, Vol. XII., p. 120.

(*i*) 18 Statutes 821.

(*k*) Act of 1890, s. 2; 18 Statutes 810.

trate's order (*l*). In emergency the master may act on the written report of the medical officer of the institution, pending the council's consideration of the matter. Apparently this power is not limited to notifiable diseases and, in fact, is more likely to be useful in connection with such diseases as skin infections and venereal diseases, since notifiable diseases are not usually treated or retained in poor law establishments.

A patient suffering from pulmonary tuberculosis in an infectious state may be compulsorily removed and detained in a hospital or institution by an order of a court of summary jurisdiction made on the application of a county council or a sanitary authority if serious risk of the infection of other persons is caused by the conditions at the patient's home (*m*). (See title TUBERCULOSIS.) [434]

Surveillance and Segregation of Contacts.—There is no general power to confine to his house, or to a part of his house, a person who has been exposed to infection but does not suffer from an infectious disease (commonly called "a contact"), but if sect. 15 of the Infectious Disease (Prevention) Act, 1890 (*n*), has been adopted, the local authority must provide temporary accommodation, free of charge, for any family compelled to vacate a house for purposes of disinfection. Further, in areas to which sect. 61 of the Act of 1907 (*o*) has been by order applied, accommodation may be provided, not only for this class, but also for any person who though not sick leaves an infected house. Such contacts may be removed compulsorily by the authority if they succeed in convincing two magistrates that removal is necessary and obtain an order to that effect. Accommodation of this kind has sometimes been called a "reception house" to distinguish it from a hospital for the sick, and these powers have occasionally proved useful in connection with an outbreak of unusual or fatal disease, such as virulent smallpox or typhus fever. Contacts with the latter disease may be segregated on the written notice of the local authority without an order from two justices, but only for so long as may be necessary to allow their persons and clothing to be deloused (*p*). Segregation and cleansing of this kind may be carried out in a reception house, but, if it can be completed within a few hours, removal to a cleansing and disinfecting station will suffice. (See titles CLEANSING OF PERSONS AND DISINFECTATION.)

The above powers are used only in exceptional circumstances. Restriction may be placed upon the movements of certain classes of contacts, such as school children (*ante*, pp. 216-7), midwives (*post*, pp. 242-3) and dairymen (*post*, p. 238), and certain contact employees are sometimes temporarily excluded from work by the terms of their employment (*e.g.* postal workers). Out-workers who are contacts may be prevented from receiving out-work by order of the local authority (*q*).

Generally, however, contacts with the common infectious diseases are allowed to mix freely with the rest of the community and to pursue their occupations. Their homes are visited at intervals throughout the

(*l*) Poor Law Act, 1880, s. 34; 12 Statutes 986.

(*m*) P.H.A., 1925, s. 62; 13 Statutes 1142.

(*n*) 13 Statutes 822.

(*o*) *Ibid.*, 938.

(*p*) Public Health (Infectious Diseases) Regulations, 1927, Sched. I., Part II. S.R. & O., 1927, No. 1004.

(*q*) Factory and Workshop Act, 1901, s. 110; 8 Statutes 574.

incubation period of the disease, and the individual members of the household are seen if possible, in order to ascertain whether any of them has sickened of the disease. Special measures may be taken with regard to indigenous malaria when the M.O.H. is of opinion that two or more cases of this kind have occurred, the local authority being empowered to appoint a special medical officer to visit houses and to examine and take specimens of blood from the inmates, as well as to take specified measures against the spread of the disease (r). When typhus fever has occurred in a house, the householder may be called upon by notice of the council to take measures for the destruction of lice in the house or upon the persons and clothing of the occupants, short of the compulsory removal of contacts for the purpose already mentioned (s). In cerebro-spinal fever, a county or county borough council may arrange for the examination (but without compulsion) of persons suspected to be sickening or who have been in contact with patients or suspects (t); and smallpox contacts may be vaccinated free of charge by the M.O.H., with their consent (u). It is, in fact, the practice of public health departments to take similar or other appropriate action for the detection of cases, and the prevention of the spread of other infectious diseases, with the consent of the individuals concerned. The employment and payment of staff for such purposes has never been questioned. It is customary for the M.O.H. to intimate to his colleagues in other districts any facts of importance to them which may come to his knowledge as the result of his inquiries, such as the probable infection of a patient in another district or the departure to another district of a contact who is still liable to sicken of an infectious disease. [435]

Home Nursing.—In areas to which sect. 67 of the Act of 1907 (a) has been applied, the sanitary authority may provide nurses to attend patients suffering from any infectious disease in their homes, if they cannot be admitted to hospital because of shortage of hospital accommodation or danger of cross-infection of wards, or because the patients are too ill to be removed. It will be remembered that "infectious disease" in this Act means any disease to which the Act of 1889 applies in the particular area. This power has not been extensively used, because it would involve the maintenance of a staff each member of which ought to be in attendance only upon one type of infectious disease at any one time. In so far as children under five years are concerned, arrangements for home nursing may be made as part of a maternity and child welfare scheme, and the home nursing of measles, whooping cough, ophthalmia neonatorum and puerperal sepsis have usually been arranged for in connection with maternity and child welfare. In districts where there is a voluntary nursing organisation, it is sometimes found convenient for the local authority to arrange for such a body to undertake the nursing of pneumonia and the other diseases mentioned on terms mutually agreeable, and, as these diseases are not likely to be spread by other means than direct contact, the engagement in this

(r) Public Health (Infectious Disease) Regulations, 1927, Sched. I., Part I, S.R. & O., 1927, No. 1004.

(s) *Ibid.*, Sched. I., Part II.

(t) Public Health (Cerebro-Spinal Fever) Regulations, 1919, s. 1; S.R. & O., 1919, No. 707.

(u) Public Health (Smallpox Prevention) Regulations, 1917, s. 2; S.R. & O., 1917, No. 146.

(a) 18 Statutes 936.

work of general nurses who are dealing with other diseases at the same time is not open to objection, so long as these nurses are not undertaking midwifery cases. [436]

Medical Treatment.—Unless a sanction under sect. 133 of P.H.A., 1875 (*b*), is obtained from the M. of H., local authorities have no general power to provide medical care in the homes of patients who suffer from infectious disease. Infectious patients have, of course, the same right to poor relief and the services of a district medical officer, as other poor persons who may be sick (*c*). But certain regulations of the M. of H. allow medical treatment to be provided for specified diseases. These are cerebro-spinal fever (*d*) and malaria, when such treatment is essential to the prevention of the spread of the disease (*e*). A welfare authority are expressly prohibited from setting up a general domiciliary service of medical practitioners for the treatment either of mothers and children as a part of a maternity and child welfare scheme (*f*), or of children and young persons under a school medical service scheme (*g*), but in connection with the former the M. of H. has recognised and advocated arrangements by local authorities under such schemes for domiciliary consultation and treatment by specialists of women suffering from puerperal fever or puerperal pyrexia (*h*). As to the treatment of tuberculosis and venereal diseases, see titles CLINICS, DISPENSARIES, TUBERCULOSIS and VENEREAL DISEASES. [487]

Supply of Medicine.—The power already mentioned in sect. 133 of P.H.A., 1875 (*i*), extends to the supply of medicines for the poorer inhabitants, and appears to have been interpreted by the M. of H. as covering permanent arrangements for the supply of certain specially expensive medicines for certain types of disease. For instance, sanitary authorities have been given a general sanction by the M. of H. to provide a temporary supply of diphtheria anti-toxin for the poorer inhabitants of their area, and this includes medical assistance for its clinical administration (*k*). The arrangement is of a permanent character but the patients who benefit by it do so temporarily. Similar authority is given to county and county borough councils for the supply of serum or vaccine for cerebro-spinal fever (*l*), and to district councils for the administration of quinine in the treatment of malaria (*m*) in regulations made under sect. 130 of the Act. If any authority desire to issue free supplies of any other medicines for the treatment of other

(*b*) 13 Statutes 679. This section merely allows a temporary supply of medical assistance and medicine.

(*c*) Public Assistance Order, 1930, Art. 106; S.R. & O., 1930, No. 185; 12 Statutes 1079.

(*d*) Public Health (Cerebro-Spinal Fever) Regulations, 1919, Art. 1; S.R. & O., 1919, No. 767.

(*e*) Public Health (Infectious Diseases) Regulations, 1927; Sched. I, Part I.; S.R. & O., 1927, No. 1004.

(*f*) Maternity and Child Welfare Act, 1918, s. 1; 11 Statutes 742.

(*g*) Education Act, 1921, s. 80 (4); 7 Statutes 175.

(*h*) M. of H. circular ("Puerperal Fever and Puerperal Pyrexia"), August 9, 1926, printed at p. 3172 of Lumley's Public Health, 10th edn.

(*i*) 13 Statutes 679.

(*k*) Provision, etc., of Diphtheria Antitoxin Order, 1910; S.R. & O., 1910, No. 807, printed at p. 3145 of Lumley's Public Health, 10th edn.

(*l*) Public Health (Cerebro-Spinal Fever) Regulations, 1919, Art. 1; S.R. & O., 1919, No. 767.

(*m*) Public Health (Infectious Diseases) Regulations, 1927, Sched. I, Part I.; S.R. & O., 1927, No. 1004.

infectious diseases than those mentioned above, such as anti-streptococcus serum for the treatment of scarlet fever or puerperal fever, sanction must be obtained from the M. of H., who will probably require periodical returns of the amounts issued and clinical information bearing on the use made of the medicines and the results of their use. [488]

Hospital Treatment.—Although the provision of isolation hospitals is primarily intended for the segregation of patients with the object of preventing the spread of infectious disease, they are places for the treatment of the sick, and local authorities admitting patients undertake the responsibility for their proper care. This involves the employment of a skilled and competent staff, as well as the provision of buildings suitable for the purpose. The general power to provide hospitals for infectious disease is contained in sect. 131 of the P.H.A., 1875 (n), and in the Isolation Hospitals Acts, 1893 and 1901 (o). For details as to the application of these powers the titles ISOLATION HOSPITALS and HOSPITAL STAFF should be consulted. [489]

Disinfection.—As the infective agents of disease may be harboured in premises, fabrics, personal clothing, beds, bedding, etc., some importance attaches to their disinfection and to the destruction of such infected articles as cannot be effectively disinfected.

So far as the infectious diseases prevalent in this country are concerned, such as scarlet fever, diphtheria, measles and whooping cough, disinfection is regarded as of comparatively little preventive value, although a large part of the law relating to the control of infectious disease is directed toward its enforcement. It must be remembered, however, that its value is well established in relation to the alimentary and insect-borne infections, such as the enteric fevers, the dysenteries, and typhus and relapsing fevers, which were common when public health law was taking form, and some of which still occur here. Moreover, while the practice of terminal disinfection—after the recovery or death or removal to hospital of a patient—is falling into disrepute, what has been called concurrent disinfection—the constant disinfection of articles soiled by patients during the course of their illness—is still of value. The power to enforce cleansing, disinfection and disinfestation is contained in a variety of enactments, which are summarised in the title DISINFECTION in Vol. IV. [440]

Letting of Infected Premises.—The possibility that infection may be retained in premises occupied and vacated by a patient suffering from an infectious disease, indicates the necessity for ensuring that such premises are not let without adequate precautions being taken. By sect. 128 of the P.H.A., 1875 (p), it is made an offence knowingly to let a house, or part of a house, in which any person has suffered from a dangerous infectious disorder (*ante*, p. 205), unless the house or part and all articles in it liable to retain infection have been disinfected to the satisfaction of a medical practitioner (q). A room hired in an inn or hotel is brought within the section. Usually, the certificate is given by the M.O.H., since disinfection is normally carried out by, or under the supervision of, his department. Whether disinfection has been carried

(n) 13 Statutes 678.

(o) *Ibid.*, 862, 888.

(p) *Ibid.*, 677.

(q) For form of certificate, see *Encyclopædia of Forms and Precedents*, Vol. XII., p. 233.

out or not, the fact that a dangerous infectious disorder has occurred within six weeks in any house or part of a house, may not be deliberately concealed by any person desiring to let it, if a question on the point is put by the prospective tenant (r). The above provisions imply a knowledge of the facts on the part of the person offering the house or room to be let, and it may happen that the owner is not aware of the occurrence of infectious disease in the household of a present or former occupier. Where sect. 7 of the Infectious Disease (Prevention) Act, 1890 (s), has been adopted, means of overcoming this difficulty are afforded. The duty then rests upon any person ceasing to occupy a house or part of it, in which infectious disease has occurred during the previous six weeks, either to cause disinfection to be carried out as certified by a medical practitioner, or to intimate the occurrence to the owner, and a truthful answer must be given to any question on the subject put either by the owner or a prospective tenant. But where the local authority are aware of a case of infectious disease in a house, they must inform the occupier of the effect of sect. 7 (t). This may conveniently be done by including a reference to it in any statement of instructions handed to the head of each family as a matter of routine when a case of infectious disease has been reported. It should be noted that the duty of an occupier under sect. 7 of the Act of 1890 arises only in case of one of the infectious diseases mentioned in the Act of 1889 or another disease to which the Act of 1890 has been extended by the authority (a). [441]

Infected Vehicles.—Brief reference has already been made to this subject (*ante*, p. 216), but it will now be considered in more detail. A person suffering from a dangerous infectious disorder (*ante*, p. 205) may not enter a public conveyance (*i.e.* one which plies openly and publicly for hire) without informing the owner, conductor or driver of his condition, or expose himself in it without proper precautions, nor may any person in charge of him permit him to do so (b). A direction by a doctor to a scarlet fever patient to walk in the middle of the road, and to talk to no one, was accepted as sufficient in *Tunbridge Wells L.B. v. Bisshopp* (c), but there is no clear guidance as to what are proper precautions where a public vehicle is hired. The onus lies upon the local authority of showing what precautions ought to have been taken in any particular case, and proving that they had not been taken. If there is really any danger it is difficult to conceive of any precaution which would serve to prevent the spread of infection by a vehicle so used, except subsequent disinfection, which is obligatory. If a vehicle has been so used, it is the duty of the owner or driver to make immediate arrangements for its disinfection as soon as the facts come to his knowledge (d), but he is under no obligation to accept such a passenger until he has been paid a sufficient sum to cover the expense so incurred. In practice the local authority usually carry out the disinfection on request, but the use of public vehicles for conveying infectious patients is discouraged by them if they have provided an ambulance, and is usually

(r) P.H.A., 1875, s. 129; 13 Statutes 677.

(s) 13 Statutes 820.

(t) Infectious Disease (Prevention) Act, 1890, s. 14; 13 Statutes 822.

(a) *Ibid.*, s. 2.

(b) P.H.A., 1875, s. 126; 13 Statutes 676.

(c) (1877), 2 C. P. D. 187; 38 Digest 200, 362.

(d) P.H.A., 1875, s. 127; 13 Statutes 677.

unwelcome to their owners. Where sect. 64 of the Act of 1907 (e) is in force, the owner or driver of a vehicle in which a case of infectious disease (*i.e.* to which the Act of 1889 applies) has been conveyed must not only arrange for its immediate disinfection but he must also inform the M.O.H. He can recover the cost from the patient or responsible person in a summary manner, but if the fact of infection came to his knowledge after the event, he can claim disinfection by the local authority free of charge. Presumably a failure on the part of the patient or his friends to inform the driver would be a failure to take proper precautions and would lay them open to a prosecution under sect. 126 of the Act of 1875.

Where sect. 11 of the Infectious Disease (Prevention) Act, 1890 (f), has been adopted, a further power is given to control the use of public conveyances, other than hearses, for the conveyance of the bodies of persons who have died of infectious disease. It is an offence to hire or use such a conveyance for the purpose without informing the owner or driver of the cause of death, or for the owner or driver, so informed, to omit to arrange for its disinfection.

As to provision of ambulances by a local authority for the above purposes, see title AMBULANCES, Vol. I., p. 272. [442]

Infected Dead Bodies.—If the body of any person who has died of infectious disease, whether of a dangerous character or not, is retained in a room where persons live or sleep, any magistrate may, on receipt of a certificate of a medical practitioner, order its removal at the cost of the local authority to a mortuary provided by them, and direct the burial of the body within a specified time (g). If the order for burial is not complied with by the friends or relations, it is the duty of the relieving officer to do so, and he may recover the cost from any responsible person. The same power extends in relation to any dead body in such a state as to be a danger to the health of the inmates of the house or room (g). Notice of any such order should be given to the relieving officer. These provisions depend upon a public mortuary having been provided by the local authority (h). Further, it is an obligation upon any person in charge of premises in which there is the body of a person who has died of a dangerous infectious disease to prevent, by all reasonably practicable means, persons from coming into contact with it unnecessarily (i). For this purpose a dangerous infectious disease is one of those named in sect. 6 of the Act of 1889, or declared to be a dangerous disease for this purpose by order of the M. of H. (k). More stringent powers may be obtained by adoption of the appropriate sections of the Infectious Disease (Prevention) Act, 1890. Thus the body of a person who has died of an infectious disease may not be retained for more than forty-eight hours in a room used as a dwelling or sleeping place or work-room without the written sanction of the M.O.H. or a medical practitioner (l). Similarly, if sect. 10 of the Act of 1890 (m) has been adopted, if the body of a person who has died of an infectious disease is retained for more than forty-eight hours in any such room without medical sanction, or any dead body is retained in a house or building so as to endanger the health of the

(e) 18 Statutes 934.

(g) P.H.A., 1875, s. 142; 13 Statutes 632.

(h) Under *ibid.*, s. 141.

(i) P.H.A., 1925, s. 57; 13 Statutes 1140. See *Kitchen v. Douglas* (1915), 80 J. P. 47; 88 Digest 201, 365.

(k) *Ibid.*, s. 60.

(l) Infectious Disease (Prevention) Act, 1890, s. 8; 13 Statutes 820.

(m) 13 Statutes 821.

inmates, or of the inmates of a neighbouring house or building, a magistrate may order either immediate burial, or removal to a mortuary and burial within a specified time. Here again the relieving officer in default of the relatives must bury and may recover the cost from them.

The body of a person, similarly affected, if the death occurred in a hospital, and the M.O.H. or a medical practitioner certifies that it should not be allowed to be removed from the hospital except for purposes of burial, may be removed only for that purpose, but, in this connection, any mortuary is deemed to be a part of the hospital (*n*). The hospital mortuary would usually be the most convenient place for the temporary reception of the corpse, but the section allows any other mortuary, such as a public mortuary, to be used, because the mortuary at the hospital may be full. The body must be taken direct from the hospital or mortuary to the place of burial. In exercising this power it is customary for the M.O.H. to have regard to the mode of encasement of a corpse. For instance, if the body is enclosed in a hermetically sealed metal shell before being placed in the coffin, it is not usually considered necessary to withhold sanction for removal to another place.

If sect. 68 of the Act of 1907 (*o*) is in force, it is an offence to hold a wake over the body of a person who has died of an infectious disease, and both the occupier of the premises where such a wake takes place and those who attend to take part in it are liable.

Over and above the statutory powers and duties before-mentioned, the M. of H. may make regulations for the speedy interment of the dead when any part of England is threatened with any formidable epidemic, endemic or infectious disease (*p*), but no such regulation seems to be in force. [448]

Tents, Vans, Sheds, etc.—The provisions of the Act of 1889 with regard to notification of infectious disease apply to every tent, van or shed or similar structure used for human habitation (*q*). Where diseases are made notifiable by regulations of the M. of H. and the duty to notify is not imposed by reference to the Act of 1889, the wording is such that a medical practitioner must notify any person suffering from the specified disease upon whom he is in attendance, irrespective of the nature of the place of residence. The special powers and duties relating to the control of malaria, dysentery, acute primary pneumonia, acute influenzal pneumonia, typhus fever, relapsing fever and enteric fever, are applicable to persons residing in tents, vans, sheds, etc. (*r*). Generally it may be said that where power is given in relation to infectious disease and the section does not refer to a house, room, etc., it is applicable to dwellers in tents and similar structures. For example, a person suffering from a dangerous infectious disorder who cannot be effectually isolated in a tent, van or shed in which he resides may be compulsorily removed to hospital under sect. 124 of the P.H.A., 1875 (*s*).

Further power of control over infectious disease in such dwellings, however, may be exercised by bye-laws, which local authorities can

(*n*) Infectious Disease (Prevention) Act, 1890, s. 9; 13 Statutes 820.

(*o*) 13 Statutes 936.

(*p*) P.H.A., 1875, s. 134; 13 Statutes 680.

(*q*) Infectious Disease (Notification) Act, 1889, s. 13; 13 Statutes 815.

(*r*) Public Health (Infectious Diseases) Regulations, 1927; S.R. & O., 1927, No. 1004.

(*s*) 13 Statutes 675.

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make with the approval of the M. of H. (f). Such bye-laws may provide for promoting cleanliness in tents, etc., and for preventing the spread of infection by their inhabitants. Model bye-laws (u) prepared by the M. of H. for the guidance of local authorities define infectious diseases as including (by name) those mentioned in the Act of 1889 with measles in addition, but do not refer to the infectious diseases notifiable under regulations of the Minister. On learning that any inmate is ill of infectious disease, the occupier of a tent, van, shed, etc., must adopt all reasonable precautions ordered by the M.O.H., and, in particular, he must not allow any other person who is not in attendance upon the patient to occupy the same tent, etc. If in any tent or van there is, or has been within six weeks, without subsequent disinfection, a case of infectious disease, the occupier must observe the following precautions: (1) he must give twenty-four hours' notice to the M.O.H. of his intention to move it and of its destination; (2) he must not take it to any market, fair, racecourse, etc., or to any place where, in the opinion of the M.O.H., there would be danger of spreading infection; (3) he must, if required by the M.O.H., remove it to any other specified site within the district; (4) he must, when moving it, comply with all reasonable requirements of the M.O.H.; and (5) he must not remove the tent or van out of the district until it has been properly disinfected. No tent, van, shed, etc., may be occupied by a new inmate after a case of infectious disease, either until six weeks have elapsed or until the tent, etc., and all articles liable to retain infection have been certified by a medical practitioner as disinfected to his satisfaction. (See also title TENTS, VANS AND SHEDS.) [444]

Common Lodging-Houses.—The keeper of a common lodging-house must give immediate notice to the M.O.H. and the relieving officer of a person in the house who is ill of fever or any infectious disease (a). This obligation is in addition to his duty, as occupier, under the Act of 1889 to notify any of the infectious diseases to which the Act applies. Local authorities must also make bye-laws in connection with common lodging-houses for, among other things, the giving of notices and the taking of precautions in the case of any infectious disease (b). Bye-law No. 6 of the model bye-laws prepared by the Ministry (c) requires the keeper, on finding that a lodger is ill of infectious disease, to adopt all precautions necessary to prevent the spread of infection. He must not allow any person, except a person in attendance on the lodger, to use or occupy the same room. If the patient is ordered to hospital by the local authority (see p. 227, *post*) he must take steps forthwith to secure a safe and prompt removal, and adopt all such precautions as, in accordance with instructions of the M.O.H., may be most suitable. Where the admission of lodgers to any room might give rise to the spread of infection as a consequence of the occurrence of a case, he must, in accordance with M.O.H.'s instructions, exclude lodgers from such room, or limit the number to be received. He must intimate in writing to the M.O.H. the death, removal or recovery of the patient, and cause cleansing and

(f) Housing of the Working Classes Act, 1885, s. 9; 13 Statutes 808.

(u) M. of H.: Model Bye-laws, XVII., 1934. May be purchased for 3d. at H.M. Stationery Office, Kingsway, W.C.2.

(a) P.H.A., 1875, ss. 84, 86, and P.H.As. Amendment Act, 1890, s. 32 (adoptive); 13 Statutes 659, 886.

(b) P.H.A., 1875, s. 80; 13 Statutes 658.

(c) M. of H.: Model Bye-laws III., 1933, price 3d.

disinfection to be carried out, in compliance with the instructions of the M.O.H. After disinfection, of the completion of which written notice must be sent to the M.O.H., he must keep the room vacant for two days. Similar obligations may be imposed by bye-laws as to seamen's lodging-houses made with the approval of the Board of Trade (*d*).

The compulsory removal to hospital of a patient suffering from a dangerous infectious disorder in a common lodging-house may be carried out by order of the local authority without the intervention of a justice (*e*). A warrant may be obtained from a justice authorising the M.O.H. to enter a common lodging-house and examine any person in it, if the M.O.H. has, on oath, stated that he has reason to believe that the lodging-house contains a person who is suffering or has recently suffered from a dangerous infectious disease (*f*). Dangerous infectious disease means here a disease mentioned in the Act of 1889 or declared to be such by order of the M. of H. (*g*). A petty sessional court, on the application of the local authority, may order the closure of a common lodging-house until it is certified free from infection by the M.O.H., if the court is satisfied that this action is necessary in the interests of the public health, because of the occurrence of dangerous infectious disease in the lodging-house, but the keeper is entitled to compensation from the authority for any loss sustained (*h*). (See also title LONGING-HOUSES.) [445]

Canal Boats.—Under sect. 13 of the Act of 1889 (*i*) and the regulations of the Minister imposing notification and duties in relation to infectious disease, the position of canal boats is the same as already described for tents, vans, sheds and similar structures (*ante*, p. 225), except that a port sanitary authority are a local authority for the purposes of the Canal Boats Act, 1877 and 1884 (*k*). Further, the master must notify, as soon as possible, any case of infectious disease (undefined), or any serious illness, to the council of a district or borough through which he is passing, and on arrival at his destination to the council of the area, and also to the owner of the boat, whose duty it is to inform the council of the area having jurisdiction in the place to which the boat may have been registered or belonging (*l*). The steps to be taken by a local authority are described in the title CANAL BOATS, at pp. 389, 390 of Vol. II. [446]

INFECTIOUS DISEASE IN SHIPS

A ship or vessel (other than one belonging to His Majesty or any foreign government) which is within the borough or district of a local authority is subject to the latter's jurisdiction, in the same manner as if it were a house, for the purposes of the following sections of the P.H.A., 1875, viz. sect. 120 (disinfection), sect. 121 (destruction of infected articles), sect. 124 (removal to hospital), sect. 125 (local regulations as to removals to hospital of persons arriving by ship), sect.

(*d*) Merchant Shipping Act, 1894, s. 214; 18 Statutes 288.

(*e*) P.H.A., 1875, s. 124; 13 Statutes 675.

(*f*) P.H.A., 1925, s. 58; *ibid.*, 1140.

(*g*) *Ibid.*, s. 60.

(*h*) *Ibid.*, s. 59.

(*i*) 13 Statutes 815.

(*k*) Act of 1877, s. 14; 13 Statutes 792.

(*l*) Canal Boats, Registration, etc., Regulations, 1878, Art. 12; see p. 3090 of Lumley's Public Health, 10th ed.

126 (prevention of exposure of infected persons or things), sect. 128 (letting for hire of infected houses), sects. 131 and 132 (provision of hospitals and recovery of cost of maintenance), and sect. 133 (temporary supply of medicine and medical assistance) (*m*). Where a port sanitary district is constituted by an order of the Minister under sect. 287 of P.H.A., 1875 (*n*), the district (which usually consists of waters and wharves) is defined by the order, and the port sanitary authority are invested, among other powers, with those of the sections above mentioned, as respects ships and vessels, with the result that ships and vessels within the port sanitary district come under the jurisdiction of the port authority and are excluded from that of the local authority. If on the other hand a port sanitary district has not been constituted, then by virtue of sect. 110 of the P.H.A., 1875 (*o*), a ship or vessel within a borough or district is subject to the jurisdiction of the council under those provisions of the Act of 1875 which have been mentioned in detail, or if it is not within a borough or district is subject to the council of the borough or district which nearest adjoins the place.

As respects notification, sect. 13 (2), (3) of the Act of 1889 (*p*) contains provisions much to the same effect, but a port sanitary authority are a local authority for the purposes of that Act (*q*), and if a ship or vessel is within a port sanitary district, the port sanitary authority must be notified. If it is not within a port sanitary district, the council of the borough or district or the nearest borough or district should be notified.

The M. of H. may assign to port sanitary authorities any powers, etc., contained in the Infectious Disease (Prevention) Act, 1890 (*r*), and he has, by order, done so with regard to matters affecting disinfection, modifying sect. 5 of the Act of 1890 for the purpose (*s*). (See *post*, p. 235, and title DISINFECTION.)

The powers and duties above-mentioned are not considered sufficient to obviate the special risk of invasion of the country by infectious disease conveyed by persons arriving on ships. The power of the M. of H. to make regulations for the prevention and treatment of epidemic, endemic and infectious disease extends to the seas, rivers and waters of the United Kingdom and the high seas within three miles of the coast (*t*), and has been further extended by sect. 1 of the P.H.A., 1896 (*u*), to cover provisions as to signals, the questions to be answered and the duties to be performed by masters, pilots and other persons on board vessels, and for the detention of vessels and persons on board; and to enable the M. of H. to provide for the enforcement of such regulations by officers of customs and the coastguard as well as by local authorities. Regulations may authorise measures for the prevention of danger to the public health from vessels arriving at a port and for the prevention of the conveyance of infection by a vessel sailing from any port, in

(*m*) P.H. (Ships, etc.) Act, 1885, s. 2; 13 Statutes 806.

(*n*) 13 Statutes 745.

(*o*) *Ibid.*, 669. As extended by s. 2 of the P.H. (Ships, etc.) Act, 1885; 13 Statutes 806.

(*p*) 13 Statutes 815.

(*q*) See s. 16 of the Act; 13 Statutes 816.

(*r*) See the P.H. (Ports) Act, 1896; *ibid.*, 873.

(*s*) Port Sanitary Authorities (Assignment of Powers) Order, 1912; S.R. & O., 1912, No. 1260; printed at p. 8146 of Lumley's Public Health, 10th edn.

(*t*) P.H.A., 1875, s. 130; 13 Statutes 678.

(*u*) 13 Statutes 871.

accordance with conventions, etc., made with foreign countries (a). Powers are also conferred on the Minister by sect. 234 of the Customs Consolidation Act, 1876 (b). [447]

The Port Sanitary Regulations, 1933.—The procedure at ports for the control of the spread of infection is governed in great detail by the Port Sanitary Regulations, 1933 (c), made in virtue of the powers above mentioned. These provisions amplify the general law, and as in practice, although not in law, these regulations supersede the general powers already mentioned, they must be dealt with at some length. [448]

Definitions.—Important definitions in the regulations are as follows: "foreign-going ship" means a ship plying between Great Britain and Northern Ireland and any place beyond the British Isles, and that part of the Continent of Europe between the River Elbe and Brest (familiarily known as the home trade area); "foreign port" means a port or place not in the British Isles; "deratisation certificate" and "deratisation exemption certificate" mean certificates under these designations issued either under the regulations or, in conformity with the International Sanitary Convention of 1926 (d), at a port notified to the Office International D'Hygiene as being staffed and equipped for deratisation; a "valid" certificate as applied to deratisation or exemption is one issued within the preceding six months, or, in the case of a ship proceeding to its home port, seven months; "approved port" means a district in which the M.O.H. has been authorised by the M. of H. to grant the above certificates; "infectious disease" means any epidemic or acute infectious disease, but does not include venereal disease. "Infected ship" means a ship which has on board a case of plague, cholera or yellow fever, or on which a case of plague has occurred more than six days after embarkation and measures as laid down in the regulations have not been taken, or on which there are plague-infected rats, or on which cholera has occurred within five days before arriving and prescribed measures have not been taken, or on which there was yellow fever at the time of departure or at any time during the voyage and prescribed measures have not been taken; "suspected ship" means a ship on which plague has occurred within six days after embarkation and prescribed measures have not been taken, or on which there has been unusual mortality of undetermined cause amongst rats, or on which cholera has occurred earlier than five days before arrival and prescribed measures have not been taken or which has come from a port or sea-board infected with yellow fever after a voyage of less than six days (or longer if infested with mosquitos) (Art. 2). [449]

Execution.—The regulations are enforced in a port sanitary district by the port sanitary authority and their officers, and as respects waters not within a port sanitary district by the council of the borough or district whose area includes or abuts on waters forming part of a customs port (e) and their officers. But authorities may agree, with the

(a) P.H.A., 1904, s. 1; 13 Statutes 893.

(b) 16 Statutes 353.

(c) S.R. & O., 1933, No. 28.

(d) Treaty Series No. 22 (1928).

(e) A customs port usually includes a large area of sea and its boundary is fixed by the Treasury under s. 11 of the Customs Consolidation Act, 1876 (16 Statutes 200).

sanction of the M. of H., that one of them may operate the regulations, or any part of them, through their officers acting in the district of the other (Art. 4). [450]

Advance Messages.—It is the duty of the master of a foreign-going ship to ascertain the state of health of all persons on board when he is approaching a port in this country (Art. 5). When approaching certain ports nominated by the Minister, foreign-going ships with wireless installations are obliged to transmit a wireless message to the sanitary authority of any case, or suspected case, of infectious disease (except tuberculosis) or if the attention of the M.O.H. is otherwise required. Such messages must reach the authority not more than twelve nor less than four hours before the expected time of arrival and, if in code, they must conform with the International Code of Signals, 1931 (Art. 6). Under similar circumstances, a foreign-going ship whether with or without wireless, approaching *any* port, must, if practicable, send a message in advance by some means and, in any case, notify the state of affairs immediately on arrival (Art. 7). At certain ports, for instance, messages may be conveyed through a Lloyd's signal station, with which the authority may enter into an arrangement. In addition to the above messages, masters of ships arriving from any foreign port (except vessels on the daily packet service in the home trade area) are required to communicate the state of health on board by flying signals on approaching port, consisting of flags indicating either that the ship is healthy, or has had infectious disease or suspected infectious disease within the past five days, or, by night, lights arranged in such a way as to indicate, if necessary, any need for the M.O.H.'s attention (Art. 9). Any information as to infectious disease received by an authority direct from a vessel must be communicated to the customs officer (Art. 8). [451]

Declarations of Health.—Whether the above messages have been transmitted or not, the master of a foreign-going ship arriving must fill in and sign a declaration of health in a prescribed form, including information generally as to definite or suspected infectious disease and deaths from any cause, as well as specific information about the occurrence of plague, cholera, yellow fever, typhus fever or smallpox, and any unusual mortality among rats (Art. 13). The declaration must be countersigned by the surgeon, if any. It is to be handed to the customs officer or port sanitary officer, whichever is first to board the vessel. In any case it must be forwarded to the authority, but if a customs officer has had to detain the ship he must be furnished by the authority with a copy (Art. 13). [452]

Mooring Stations.—The authority, in concurrence with the customs officer and the harbour master, must establish mooring stations both within and outside the docks (inner and outer mooring stations), the latter being within their area unless the M. of H. otherwise consents (Art. 10). In connection with any particular ship, any berth may be designated a special mooring station by the M.O.H. with the concurrence of the above-mentioned officers. Any regular or special mooring station must be so situated that the ship may be moored out of contact with any other ship or with the shore (Art. 10). The provision for special mooring stations enables a M.O.H. to deal with a ship, if necessary or convenient, at or near a berth which she has already occupied. [453]

Lists of Infected Ports.—It is the duty of the M.O.H. to supply pilots and customs officers at his port from time to time with a list of

foreign ports and sea-boards which are known or believed to be infected with plague (human or rodent), cholera, yellow fever, typhus fever or smallpox (Art. 11). For this information he depends mainly upon information furnished by the M. of H. confidentially to him every Monday morning, giving the facts as to infectious diseases reported during the previous week by consuls, foreign national and international bulletins and other sources (f). [454]

Infected or Suspected Ships, etc.—By Art. 12 the master of a ship arriving at a port must take the ship to an established mooring station, unless the M.O.H. otherwise allows, (1) if it is infected or suspected (*ante*, p. 229) or has a case of typhus fever or smallpox on board; or (2) has had a case or suspected case of plague, cholera, yellow fever, typhus fever or smallpox during the previous six weeks; or (3) if plague has been found or suspected in rats or mice; or (4) if there has been sickness or mortality among rats or mice not due to rat-repressive measures. In all such cases this duty is subject to the condition that the prescribed measures to prevent the spread of infection have not yet been taken. The master must also take the ship to a mooring station if the M.O.H. so directs, having reason to believe that any of the above conditions have existed or do exist. The vessel remains subject to control until examined by the M.O.H. and the prescribed measures have been carried out (Art. 12 (4)). These measures are set out in detail in the International Sanitary Convention and in the Fourth Schedule to the regulations.

If a ship is infected (g) with plague, Part A. of the Fourth Schedule requires it to be inspected and all persons on board to be medically examined; the sick must immediately be disembarked and isolated; suspects and contacts are to be disembarked, if possible, and may be isolated by the M.O.H., or kept under surveillance for a period not exceeding six days after the ship's arrival. If allowed to remain on board during this period, the crew may be prohibited from leaving the ship; infected articles and quarters must be cleansed of vermin and, if necessary, disinfected. Deratization must be carried out either before or after unloading cargo, or both, and in any case before loading a new cargo, unless in special circumstances the M.O.H. permits the ship, suitably isolated and with precautions against escape of rats, to remain in the district, without deratization, only for a sufficient time to carry out partial unloading. If the ship is suspected as regards plague, the same provisions as to inspection, medical examination, disinfection, cleansing from vermin and deratization apply, but the crew and passengers may be kept under surveillance for six days only and the former confined to the ship during this period. [455]

On the arrival of a ship infected with cholera the same obligations as to inspection, examination, disembarkation and isolation of the sick hold as for plague (Part B. of Sched. IV.). The crew and passengers may also be disembarked and either isolated or placed under surveillance for not more than five clear days from arrival, provided that persons who satisfy the M.O.H. that they have recently been vaccinated against cholera may not be isolated. Infected articles and quarters must be disinfected; unloading must be carried out under the supervision of the

(f) M. of H., "Weekly Record of Infectious Diseases at Ports, etc., at Home and Abroad" (Confidential).

(g) The meanings of the words "infected" and "suspected" *ante*, on p. 229, should be studied in connection with this and succeeding paragraphs.

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M.O.H. in such a way as to prevent the spread of infection. If the drinking water is suspect, the M.O.H. must have it disinfected and emptied and replaced by a pure supply after the tanks and filters have also been disinfected, and the emptying of water ballast taken at an infected port may be prohibited unless it is first disinfected. The M.O.H. may require disinfection of human dejecta and waste water before discharge. If the ship is suspected of cholera the same provisions as to inspection, medical examination, isolation and water apply, except that passengers and crew may be kept only under surveillance for five days, without isolation.

In the case of yellow fever, the risk of the spread of which is small in this country, such only of the measures contained in Art. 36 of the International Sanitary Convention, 1926, as the M.O.H. thinks necessary, need be taken (Art. 12 (3)). If the ship is infected, they include medical inspection; disembarkation of the sick and, if ill for not more than five days, their isolation in such a way as to prevent infection of mosquitos; other persons disembarking to be kept under surveillance for not more than six days; the ship to be moored at least 200 metres from the shore and at a sufficient distance from harbour boats to render access of mosquitos improbable; the destruction of mosquitos, their eggs and larvæ; and surveillance for not more than six days of those taking part in discharge of cargo before the destruction of mosquitos. If the ship is suspected of yellow fever, any of the above measures, except, of course, those relating to patients, may be applied.

If there is a case of typhus on an arriving ship, or if there has been such a case within the previous six weeks, Part C. of the Fourth Schedule requires the ship to be inspected and all persons medically examined; the sick are to be disembarked, isolated and deloused; contacts and persons reasonably suspected of louse infestation must be deloused and may be placed under surveillance for not more than twelve days thereafter. Articles and quarters infested with lice or infected must be disinfected.

If smallpox is on board, or has occurred within six weeks on an arriving ship, Part D. of the Fourth Schedule requires an inspection and medical examination to be made; the sick must be disembarked and isolated; contacts who are not adequately protected by recent vaccination or a previous attack of smallpox must be offered vaccination; contacts must be kept under surveillance for a period not exceeding fourteen days; and infected articles and quarters are to be disinfected. [456]

Detention of Ships.—When a customs officer learns from a declaration of health (*ante*, p. 230) or otherwise, that a person has died during the past six weeks from a disease suspected to be infectious, on board a ship coming from a foreign port, or that the ship comes from an infected port or sea-board, or that plague, or sickness or death not due to repressive measures has occurred among rats or mice in the ship, it is his duty to direct the ship to a mooring station and detain it there, unless otherwise authorised by the M.O.H. (Art. 14 (1)). The M.O.H. may also order the detention for medical examination of a ship arriving from a foreign port, and he may instruct the customs officer in writing to detain it (Art. 14 (2)). Detention by a customs officer ceases as soon as the ship has been examined by the M.O.H. or, in any case, at the expiry of twelve hours, but the period of detention may be extended by the M.O.H. himself (Art. 15 (2)). If the M.O.H. initiates detention, the

vessel is allowed to go to or remain at its ordinary place of mooring, unless he otherwise directs (Art. 15 (1)). [457]

Restriction on Boarding or Leaving Ship.—No person, other than a pilot, customs officer, immigration officer or an officer of the authority, may, without permission, board or leave a ship arriving from a foreign port until she is free from control—i.e. until the customs officer has issued what is called free pratique (Art. 16 (1)). The M.O.H. may require from any person, before disembarkation, his name and the address of his destination and any particulars necessary for transmission to the local authority at his destination (Art. 16 (2)). In such case, any change of address, within a time to be specified by the M.O.H., from that given must be intimated to the M.O.H. of the district in which he left the ship (Art. 16 (3)). [458]

Ships from Infected Ports and at Mooring Stations.—It is the duty of the M.O.H. to inspect on arrival a ship from an infected port or seaboard, and also any ship from a foreign port on which there has been during the voyage verified or suspected plague, cholera, yellow fever, typhus fever, smallpox or rodent plague (Art. 17). If a ship has gone to a mooring station or been detained by a customs officer, the M.O.H. must examine it within twelve hours or as soon as possible thereafter, and he must detain it, or extend its detention, so far as is necessary to carry out the requirements of the regulations. If a ship is detained or sent to a mooring station or isolated at its ordinary berth, because of verified or suspected rat-plague, he must take steps to prevent the escape of rats from the ship (Art. 17). [459]

Removal to Mooring Station after Arrival.—The M.O.H. may instruct the master of a ship to remove it from its berth to a mooring station, if plague-infected rats are discovered, or if plague, cholera, yellow fever, typhus fever or smallpox occurs on board while it is in port (Art. 18). [460]

Deratization.—By Art. 19 of the regulations, vessels arriving from a foreign port at an approved home port (h) without a valid deratization or deratization exemption certificate (h) have to be inspected by the staff of the M.O.H. to ascertain the state of rat infestation. If it is free from rats or so maintained as to keep their number down to a minimum, the M.O.H. must issue a deratization exemption certificate. Otherwise, he must require deratization to be carried out by an approved method and the master must comply; and on its completion to the M.O.H.'s satisfaction he must issue a deratization certificate. Under Art. 20, if the owner of a ship in an approved port, or a master on his behalf, at any time requests in writing inspection for purposes of certification, the M.O.H. must comply and, according to the circumstances, grant an exemption certificate or order deratization and issue a deratization certificate. These certificates must be in a form prescribed by the Minister (i), and prepared in triplicate for supply to the authority, the M. of H. and the master, and under Art. 21 (3), the ship owner or master must pay a fee for inspection and certification, according to a scale settled by the M. of H. (k). (See also title RATS AND MICE.) [461]

Embarkation of Persons.—The M.O.H. may examine any person proposing to embark on a ship in his port if he suspects that the person

(h) As to the meaning of these terms, see *ante*, p. 229.

(i) Art. 21, and see M. of H. Form, Part 11.

(k) M. of H. circular 1355, of September 28, 1933.

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may be suffering from plague, cholera, yellow fever, typhus fever or smallpox. If the diagnosis is confirmed embarkation may be prohibited. If variola major exists in any part of Great Britain, the M.O.H. may prohibit any person from that part who is a contact with a case, and who is not adequately protected by vaccination, from embarking on any ship going beyond the British Isles (Art. 22). When the M. of H. has declared by notice in the *London Gazette* that any district is infected with plague, cholera or yellow fever, or that typhus fever or smallpox exists there in an epidemic form, the special provisions in Arts. 24 to 27 of the regulations as to examination of persons embarking, inspection and disinfection of potentially infective articles and quarters, prevention of rat-infestation and access of rats from the shore to ships, supplies of pure water, exclusion of foodstuffs, disinfection of bilges and the delousing of persons are to have effect as respects the diseases to which they apply (Art. 23). [462]

Staff, Premises, etc.—Port sanitary authorities are empowered, and the M. of H. may require them, to appoint assistant medical officers of health at salaries approved by him; to direct what duties shall be assigned to such assistants; to arrange for premises for medical examination, apparatus for cleansing and disinfection of ships, persons and articles, temporary accommodation for contacts, hospitals and means of transport, and do any other things necessary for enabling the regulations to be complied with (Art. 28). [463]

Powers and Duties of M.O.H.—In addition to the special powers and duties already mentioned, officers of the authority have power of boarding at any time a ship in their district (1), and may cause a ship to be brought to a safe place for boarding (Art. 29). The M.O.H. may, and if required by the authority or the M. of H. must, examine any case of infectious disease on board a ship in the district, any suspects or contacts on board, and any person on board believed to be verminous; detain such persons for this purpose either on board ship or at an appointed place on shore; cause such persons and their effects to be disinfected; prohibit their disembarkation or permit it only on specified conditions necessary to prevent the spread of infection; and require the master to assist in all measures for preventing the spread of infection (Art. 30). The M.O.H. may remove to hospital—without an order from a justice or the authority—any case of infectious disease not too ill to be so removed, and if the patient is too ill to be removed, prohibit in writing his departure from the ship (Art. 31). [464]

Duties of Master and Others.—The masters of ships are required to answer all questions put to them on the health conditions on their ships by customs or sanitary officers, and to furnish information and assistance to the authority and their officers. In particular, they must notify any case of infectious disease on the ship, and any circumstances likely to lead to the spread of disease and include particulars of the sanitary state of the ship and the presence of dead rats or sickness among rats. Masters must comply with the regulations and any directions or requirements of the authority or their officers made under them (Art. 32). Similar obligations rest on all persons to whom the regulations apply, and, in particular, a person under surveillance must

(1) Where the authority are not a port sanitary authority, "district" includes the waters of a customs port abutting on the district, so far as they are not within the district of a port sanitary authority; see Art. 2 of the regulations.

submit to examination at the direction of the M.O.H. of the district where he happens to be (Art. 33). [465]

Cleansing of Ships.—The Port Sanitary Authorities (Assignment of Powers) Order, 1912 (*m*), which modifies sect. 5 of the Infectious Disease (Prevention) Act, 1890, as regards the cleansing and disinfection of berths and cabins (*ante*, p. 228) is extended to apply to any part of a ship (Art. 34). [466]

Costs and their Recovery.—If the master of a ship requests an authority to carry out any measures which fall within his duty under the regulations, they may do so either without charge or at his cost, and they may require payment in advance (Art. 35). The charge must not exceed the actual or estimated cost nor may it be greater than £20 unless prior notice to that effect has been given to the master. A statement in writing of the work done must be furnished to the master free of charge if he requests it, except in the case of deratisation and deratisation exemption certificates (Art. 35 (3)). Fees and charges may be recovered either summarily or if below £50 in the county court under sects. 251, 261 of the P.H.A., 1875 (*n*), as applied by Art. 36 of the regulations. [467]

Exemptions.—Mails (other than parcel mails) may not be detained, disinfected, destroyed or delayed for action under the regulations (Art. 38). Further, if the master of a vessel in or approaching a port gives notice that he does not desire to submit to the regulations, but prefers to put to sea, he may do so forthwith, upon notifying the M.O.H., but if he desires to land goods or passengers or take on necessary supplies he must submit to isolation of the ship and any other precautions which the M.O.H. may consider necessary (Art. 39). [468]

Administration.—These regulations have been fully dealt with as they represent the most complete sanitary code for the prevention of spread of infection in force in this country. They may also form the model for future regulations providing by international agreement against the spread of infection by air-transport (*o*). As port sanitary administration still ranks for an *ad hoc* Government grant (*p*), the M. of H. exercises a close supervision and co-ordination of the work of port sanitary authorities. Measures have been taken through the Association of Port Sanitary Authorities (see title PORT SANITARY AUTHORITIES, ASSOCIATION OF) to secure uniformity of forms and procedure at British ports, as far as possible, in order to avoid confusion among the seafaring population.

While the powers of port medical officers of health for the control of ships and persons suffering from or exposed to *any* acute infectious disease (except venereal disease) are extensive, and might be made unnecessarily burdensome both to shipping interests and the officers themselves, their great object is to prevent the invasion of the country by the five important diseases which are not endemic here, viz. plague, cholera, yellow fever, typhus fever and smallpox. Where, therefore, the port sanitary authority maintain a sufficient staff for effectively exercising their duties, the customs officer may be relieved of the obligation to send arriving ships to a mooring station, if suspicion does not arise in

(*m*) S.R. & O., 1912, No. 1200.

(*n*) 13 Statutes 730, 734.

(*o*) See International Sanitary Convention for Aerial Navigation (Government Paper, Miscellaneous, No. 6, 1934).

(*p*) See p. 261 of Vol. VI.

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connection with one of these diseases. This is provided for in Art. 14 (1) of the regulations (*ante*, p. 232) by the words "unless the medical officer or other authorised officer of the sanitary authority otherwise allows." This authorisation may be given in general terms by the M.O.H. to the customs officer, and the terms of the form of exemption in one port may be quoted (g) :

"The following classes of vessels are exempt from detention in terms of Art. 14 (1) of the Regulations, unless specific instructions to the contrary are given in respect of any particular vessel, viz. :

(1) All vessels referred to in Art. 14 (1) (a) (on which a death from, or a case of, infectious disease has occurred within the last six weeks) unless such disease is known, or suspected, to have been cholera, plague, yellow fever, typhus, or smallpox, and

(2) All vessels arriving from ports included in the list of infected ports or seaboard (referred to in Art. 11 and Art. 14 (1) (b)) unless they are carrying cargoes of grain or unless there has been during the voyage sickness or death among the crew or passengers, or unusual mortality among rats."

The M. of H. has not objected to this type of arrangement.

The routine deratisation of ships under Arts. 19 to 21 of the regulations constitutes a large part of the work of a port sanitary authority. It involves the employment of inspectors or rat officers to search for rats on ships without valid certificates, to supervise deratisation and to satisfy themselves that it has been effective. Deratisation is usually carried out by means of fumigation with sulphur gases or hydrogen cyanide and may actually be done by the authority, in which case they may maintain a staff and equipment for the purpose and may recover the cost; or it may be arranged by private contract between the owners or master and firms recognised by the M.O.H. as capable of carrying out the work properly. As certificates are subject to perusal throughout the ports of the world, the greatest care is desirable to ensure that they are based on thorough deratisation and subsequent inspection. [469]

Importation of Parrots.—In order to prevent the disease known as psittacosis, which is conveyed by parrots and birds of the same species, special provisions are made by regulations of the M. of H. as to their importation (r), and these regulations are enforced by port sanitary authorities. The term "parrot" means a bird of the species *Psittaciformes* and includes parrots, parrakeets, lovebirds, macaws, cockatoos, cockatiels, conures, caiques, lories and lorikeets. Budgerigars, the keeping of which is popular in this country, belong to this species. Importation is absolutely prohibited except in case of birds required for medical or veterinary research, or consigned to the Zoological Society of London or to a person specially authorised by the M. of H. to import parrots otherwise than for sale. The master of a ship must inform the owner of any parrot as to the prohibition and notify the customs officer on arrival. The customs officer must detain any such bird by notice in writing and also notify the M.O.H., who must inform the importer that the parrot will be destroyed unless a written undertaking is received to

(g) Annual Report of the M.O.H. of Cardiff, 1933, p. 88.

(r) Parrots (Prohibition of Import) Regulations, 1930; S.R. & O., 1930, No. 299.

re-export it in the ship. If this undertaking is not received or is broken the parrot must be destroyed. In any case, if a bird appears to be diseased, the M.O.H. may order its destruction. (See also title PORT SANITARY AUTHORITIES.) [470]

MILK AND INFECTIOUS DISEASE

Certain infectious diseases may be conveyed to human beings by the consumption of infected milk. These include the enteric fevers, scarlet fever, diphtheria, dysentery, bacterial food poisoning, septic sore throat, undulant fever, tuberculosis and, possibly, infantile diarrhoea and acute poliomyelitis. Some of these diseases may not be notifiable in the area affected by an outbreak, and the power of the local authority is to that extent restricted. Where sect. 4 of the Infectious Disease (Prevention) Act, 1890 (*s*), has been adopted, the M.O.H. may obtain from a justice having jurisdiction in the district where any dairy is situated an order enabling him to inspect a dairy whether in or outside his area and, if accompanied by a veterinary inspector, also the cattle, whenever he has reason to believe that any person in his district has been infected, or is likely to be infected, by milk sold in his district. If his opinion is confirmed by his inspection, he must submit a report to his authority, accompanied by a veterinary report. The authority may give the dairyman twenty-four hours' notice to appear before them and show cause why his supply should not be stopped in the district, and, if he fails to show cause, the authority may make an order stopping the supply, informing the M. of H., the county council and, if appropriate, the council of the district where the dairy is situated. The order must be withdrawn as soon as the authority, or their M.O.H., is satisfied that the source of the milk has been changed or the cause of infection removed. An order excuses a dairyman from any breach of contract arising from it. A dairy includes any place from or on which milk is supplied or kept for sale, and a dairyman includes any cow-keeper, purveyor of milk or occupier of a dairy (*t*). "Infectious disease" means a disease mentioned in the Act of 1889, or to which the Act of 1890 has been extended in the manner provided in the Act of 1889 (*u*). Where sects. 53, 54 of the Act of 1907 are in force, a dairyman supplying milk in the area of the local authority must notify to the M.O.H. all cases of infectious disease among persons engaged at or in connection with his dairy, as soon as he becomes aware of or suspects its occurrence, whether his dairy is within or outside that area (*a*); and if the M.O.H. certifies to his authority that milk is reasonably suspected to be conveying infectious disease in their area, the dairyman or dairymen responsible may be called upon to supply a list, for a small payment, of all the sources from which the milk is obtained (*b*). Infectious disease, for the purpose of this Act, means a disease for the time being notifiable under the Act of 1889 (*c*).

While the above powers are useful, especially in enabling an authority and its officers to take action with regard to dairies situated

(*s*) 13 Statutes 818.

(*t*) Infectious Disease (Prevention) Act, 1890, s. 2; 13 Statutes 816.

(*u*) Infectious Disease (Notification) Act, 1889, ss. 6, 7; 13 Statutes 813, 814.

(*a*) P.H.A. (Amendment) Act, 1907, s. 54; 13 Statutes 931.

(*b*) *Ibid.*, s. 53.

(*c*) *Ibid.*, s. 13; 13 Statutes 915.

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outside their area, and to obtain detailed knowledge as to the sources of any supply, they have virtually been rendered inoperative by the Milk and Dairies (Consolidation) Act, 1915 (*d*), as amended by the Milk and Dairies (Amendment) Act, 1922 (*e*), and the Milk Act, 1934 (*f*), and orders made thereunder (*g*). These Acts and orders aim generally at the production and sale of clean milk from healthy cows and to that extent tend to reduce the spread of infectious disease by milk. (See also title MILK AND DAIRIES.) [471]

Acute Infectious Diseases.—Special provisions are contained, however, in Arts. 17 to 19 of the Milk and Dairies Order, 1926, which deal directly with these diseases and apply to all premises from or on which milk is supplied or kept for sale, or for the manufacture of butter, cheese, dried or condensed milk, except shops where milk is sold only in closed receptacles as received, or is sold only for consumption on the premises (Art. 2). "Infectious disease" means any disease notifiable under the Act of 1889, and also dysentery (Art. 2). Any person having access to milk or its receptacles on such premises, in whose household infectious disease occurs, must notify the occupier of the premises, and the latter must notify the M.O.H., unless notice has already been given (Art. 17 (1)). Conversely, if the M.O.H. discovers that any such person is suffering from infectious disease or is a contact, he must notify the dairyman, and, if the dairy premises are outside his area, also the M.O.H. concerned (Art. 17 (2)). If the M.O.H. possesses evidence that infectious disease is caused or likely to be caused by milk sold in his area, he may, without application to a justice, serve a notice on the dairyman referring to such evidence, and calling upon him (if the premises are within the area) to cease to supply any milk or milk from a specified source for sale or manufacture for human consumption; if the premises are outside the area he may only prohibit sale within the area (Art. 18). In the latter case he must send a copy of the notice to the M.O.H. of the area where the dairy is situated (Art. 18 (4)). A notice operates only for twenty-four hours, but may be renewed for similar successive periods and must be withdrawn as soon as the M.O.H. is satisfied that the risk of infection has ceased (Art. 18 (2)). He must immediately inform the authority and, if the dairy is in his area, endeavour to trace the source of infection. A notice is binding on the dairyman, but if it is eventually proved that no infection arose from the milk or the milk was not infected, he is entitled to full compensation for loss or damage (Art. 18 (6)). If the M.O.H. suspects that any of the personnel of a dairy is suffering from, or has been in contact with, infectious disease or is in such a condition that there is a danger of his transmitting infection, he may give notice to the dairyman that he considers it necessary to examine all or any such persons, and facilities for the purpose must be afforded (Art. 19 (1)). In the event of his discovering a person whose employment is likely to lead to the spread of infectious disease, he may exclude him, by written notices to such person and the employer, from engaging in work which is directly concerned with the production, distribution and storage

(*d*) 8 Statutes 864.

(*e*) *Ibid.*, 879.

(*f*) 27 Statutes 7.

(*g*) Milk (Special Designations) Order, 1923 (S.R. & O., 1923, No. 601), and Milk and Dairies Order, 1926 (S.R. & O., 1926, No. 821), printed at pp. 3566, 3576 of Lumley's Public Health, 10th ed.

of milk, for a specified period (Art. 19 (2)). No such person nor any person suffering from or recently in contact with infectious disease may take part in the production, distribution, or storage of milk until the risk of transmission has ceased, nor may the dairyman allow him to do so (Art. 19 (3) (4)). [472]

Tuberculosis.—Similar means are provided in the Act of 1915 (*h*) for dealing with milk causing or likely to cause tuberculosis. In this case the authority mainly responsible are the county or county borough council. The M.O.H., whether of a county, county borough or county district, in such circumstances must endeavour to find the sources of supply and inform the M.O.H. of the county or county borough in which the cows are kept, unless he happens to be himself the M.O.H. of that area. It is the duty of the county or county borough M.O.H. concerned to cause the cattle in the dairy to be inspected and to investigate the matter. Sufficient notice must be given to the authority whose M.O.H. gave the original notice, and to the dairyman, to enable them to be represented at the inspection by the officers of such authority and the dairyman's veterinary surgeon respectively (Art. 4 (3)). Copies of any reports on the inspection must be furnished by the county or county borough council to the M.O.H. giving the original notice. If it is proposed to stop the milk supply, the county or county borough council must under the First Schedule to the Act forward copies of these reports to the dairyman and serve a notice upon him to appear before them within a specified time, not being less than forty-eight hours, to show cause why his milk supply should not be stopped. If he fails to show cause, they may order him to cease to sell his milk or the milk from certain cows for human consumption, or to use or sell it for manufacture of products for human consumption, either absolutely or unless specified conditions are complied with. The reasons for the prohibition must be stated in the order. Copies of the order must be sent not only to the dairyman but to the M. of H. and the M. of A. & F. If no order is made, reasonable expenses must be repaid to the dairyman. If it is made it must be withdrawn by notice as soon as the council or the M.O.H. is satisfied that the danger of causing disease has ceased, and the M.O.H. may so act himself if the council have authorised him. The dairyman has a right of appeal against an order to a court of summary jurisdiction whose decision is final, but pending its decision the order remains in force. The court hearing an appeal must decide whether the order was made in consequence of the dairyman's default or negligence or not. If the dairyman is exonerated, or if, in the absence of an appeal against an order, it is proved that he was not in default or negligent, or that the duration of an order was unduly prolonged, he is entitled to recover full compensation for loss or damage.

A person suffering from pulmonary tuberculosis may not enter upon any occupation involving contact with milk or the vessels containing it, and any person already so employed who is suffering from pulmonary tuberculosis and is in an infectious state may be excluded from this form of employment (*i*). In the latter case a report of the M.O.H. is required and the authority may authorise either the clerk or the M.O.H. to serve a notice which takes effect not sooner than seven days after (*i*). An

(*h*) Milk and Dairies (Consolidation) Act, 1915, ss. 3, 4; 8 Statutes 866, 867.

(*i*) Public Health (Prevention of Tuberculosis) Regulations, 1925, Arts. 4, 5; S.R. & O., 1925, No. 757.

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aggrieved person may appeal to a court of summary jurisdiction, and compensation is payable by the authority under sect. 808 of the P.H.A., 1875 (*k*). The presence of tubercle bacilli in the sputum is definite confirmation of infectiousness. (See also title TUBERCULOSIS.) [473]

Administration.—In ordinary practice the full procedure of the law for stopping milk supplies is seldom followed. When there is evidence that an acute infectious disease is being conveyed by milk, the M.O.H. usually visits the dairy, if it is within his area, explains the circumstances to the dairyman and obtains his consent and that of his employees to submit to medical examination. If any infectious person or suspect is found (bacteriological examination being made where applicable) there is usually no difficulty in obtaining the dairyman's and the employee's agreement to exclusion from work until the individual is free from infection or any doubt has been cleared up. With the removal of such sources of infection, and a thorough cleansing and sterilisation by the dairyman of his premises and utensils, it is not usually necessary to stop the milk supply. At the same time any farms or other premises from which milk is purchased by the dairyman are ascertained and similarly dealt with if within the area. If outside, information is transmitted to the M.O.H. concerned, who proceeds in the same way and may invite the notifying M.O.H. or his officers to accompany him in his investigations. When there is any doubt or delay as to the ascertainment of the cause of the outbreak, the dairyman may be induced to send his milk to premises where it may be pasteurised and to sell it as such or to obtain an alternative temporary supply. An M.O.H., however, who anticipates that he may have ultimately to enforce stoppage of a supply should follow strictly the procedure as to notices, etc., prescribed by the statute or order under which action will be taken.

Similarly, when milk is considered to be likely to cause tuberculosis (usually as a result of routine bacteriological examination of samples of the milk), the discovery by a veterinary surgeon of a tuberculous cow or cows at the statutory visit of inspection affords an opportunity to inform the dairyman of the fact. He is then liable to a penalty if he sells the milk from such a cow or cows (*l*). The withdrawal of infected milk from the supply in this way is usually regarded as a sufficient precaution, pending the prolonged bacteriological investigation (involving animal tests) of the milk from the remaining cows which is permissible (*m*) and is usually carried out. Moreover, if the veterinary inspector conducting the examination is also inspector under the Diseases of Animals Acts he may take action forthwith for the slaughter of any tuberculous beast, for the exclusion of the milk of a tuberculous or suspected cow from the supply, and for the isolation of such a cow (*n*). If such action is taken, and the officers are satisfied that the dairyman will conscientiously comply with instructions and his statutory duties under the Acts and Orders, stoppage of the supply is rarely necessary. (See also titles MILK AND DAIRIES and DISEASES OF ANIMALS.) [474]

(*k*) 13 Statutes 755.

(*l*) Milk and Dairies (Consolidation) Act, 1915, s. 5, and amending Act of 1922, s. 5; 8 Statutes 868, 881.

(*m*) Milk and Dairies Order, 1926, Art. 10; S.R. & O., 1926, No. 821.

(*n*) Tuberculosis Order, 1925, of Minister of Agriculture, Arts. 5, 10, 11; S.R. & O., 1925, No. 681.

DISEASES OF ANIMALS COMMUNICABLE TO MAN

These diseases are mainly of public health concern in so far as they are conveyed by milk (see *ante*, p. 237). Human beings may, however, be infected by direct contact with animals, or their hides, hair, etc., or by consumption of infected flesh. The more important diseases which may be contracted in this way are set out in Table III., *post*, at p. 255. The M.O.H. is not primarily concerned with these diseases as they occur in animals, but certain of them must be reported to him (see *ante*, pp. 214, 215, and Table III.) and in any case it is his duty to report to the M. of H. any serious (though not necessarily large) outbreak of disease of this kind (*o*) and therefore to investigate its occurrence. The most frequent occasion which calls for investigation is an outbreak of food-poisoning, and it may then be necessary to obtain samples of articles of food for bacteriological and chemical examination and to withhold supplies for sale. The aid of the police and the coroner may have to be invoked for this purpose, although food-vendors are usually ready to co-operate in any way desired. Local power to enforce notification of food-poisoning facilitates such enquiries (*ante*, p. 210, and Appendix at p. 256), and power may also be obtained by local Act enabling the M.O.H. or his officers to take samples of food for bacteriological examination and to cause food to be withheld from sale for a specified time (*p*). Where the evidence of contamination of food is sufficient to satisfy a justice, certain classes of food may be withdrawn from sale by seizure and destruction under sects. 116 to 119 of the P.H.A., 1875 (*q*), and if sect. 28 of the P.H.As. Amendment Act, 1890 (*r*), has been adopted, action may be taken with regard to any food intended for human consumption. The nature of the investigations, however, and the time necessary for their completion, render this procedure of little value for the prevention of the spread of food-poisoning. (See also title UNSOUND FOOD.) [475]

SHELL FISH

A special risk of spreading both food-poisoning and other alimentary infections (e.g. typhoid fever) attaches to the consumption of shell fish, and local authorities and the M.O.H. perform duties and exercise powers in relation to the layings from which suspected shell fish are derived, under the P.H. (Shell Fish) Regulations, 1934 (*s*). The term "layings" covers any place where shell fish are taken or deposited (Art. 2). If it appears that disease (whether infectious or not) has been conveyed or is likely to be caused by shell fish, the M.O.H. must ascertain the layings and report to the authority, who may call upon fishmongers to supply him with information as to the origin of any consignments during the previous six weeks. If such layings are outside the area, the proper council must be informed of the circumstances and supplied with copies of any reports. The M.O.H. must investigate any suspected laying in his area and submit reports, including any bacteriological reports, to his council (Art. 4). If the authority are satisfied that there is

(*o*) Sanitary Officers (Outside London) Regulations, 1935, Art. 17 (7); S.R. & O., 1935, No. 1110.

(*p*) E.g. Cardiff Corpn. Act, 1934 (24 & 25 Geo. 5, c. xcv., s. 48).

(*q*) 13 Statutes 672, 678.

(*r*) *Ibid.*, 835.

(*s*) S.R. & O., 1934, No. 1342.

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danger to the public health, they may prohibit the sale of shell fish from the layings unless cleansed, relaid or sterilised by an approved process, but 21 days' notice of the order and reasonable opportunity to make representations must be given—in the case of public layings by posters, etc., in the case of private layings by notice to every owner or tenant. Copies of notices must also be sent to the local sea fisheries committee (Art. 5). Notice that an order has been made must be published in the local press and served, if the laying is private, on every owner or tenant, and warning notices conveying the substance of the order must, in the case of public layings, be prominently posted in their vicinity and may also be so exhibited near private layings (Art. 6). The M. of H. and the M. of A. & F. must also be informed (Art. 7). If the authority are not the authority by whom the original investigation was made, they must inform the latter of the action they propose to take, and the latter may appeal within a month to the M. of H. if dissatisfied (Art. 8). Aggrieved persons may likewise appeal against an order within fourteen days to the M. of H. who may confirm, vary or quash it (Art. 9). An authority, having made an order, must vary or revoke it as soon as they are satisfied that danger to health no longer exists, furnishing the M. of H. and M. of A. & F. with their reasons, and similar rights of appeal and powers of the M. of H. apply in such circumstances as to the making of orders (Art. 10). Orders take effect not less than fourteen days after notice has been published (Art. 11). No person may thereafter sell shell fish derived from the laying (Art. 12), and the M.O.H. must make all such enquiries and investigations (even outside his area) as are necessary to ensure that the order is complied with (Art. 13). (See also title SHELL FISH, CLEANSING OR.) [476]

CONVEYANCE OF INFECTION

Midwives and Infectious Disease.—It is a duty of the Central Midwives Board to make rules governing the practice of midwives (*l*), and of a local supervising authority to exercise supervision, in accordance with such rules, over the midwives practising in their area (*u*). These rules (*a*), among other things, impose obligations as to general cleanliness, the use of sterilisable clothing, and equipment and antiseptics, and the disinfection of hands and instruments before attending to patients, with the object of preventing the spread of infection (Rules E., 5, 6 and 7). In particular, when a midwife has been in contact with any infectious person, or is herself liable to transmit infection, or has laid out a dead body, she must immediately notify the local supervising authority on a prescribed form and carry out disinfection of her person, clothing, instruments, etc., to the satisfaction of that authority (Rule E. 9). If she is in attendance upon a lying-in patient whose temperature has been continuously or recurrently as high as 100·4° F. during a period of twenty-four hours, or has reached 99·4° F. on three successive days, or if there is inflammation of or discharge from the child's eyes, or skin eruptions on the child, or inflammation about the navel, she must call in medical aid and inform the authority, using

(*l*) Midwives Act, 1902, s. 3; 11 Statutes 780.

(*u*) *Ibid.*, s. 8.

(*a*) Central Midwives Board: Rules under the Midwives Acts (Spottiswoode, Ballantyne & Co., Ltd., 1 New St. Sq., London, 1934).

prescribed forms for the purpose (Rule E. 12). This rule is not obligatory upon a midwife acting as a maternity nurse under the supervision of a medical practitioner (Rule E. 1). She must also cleanse the child's eyes as soon as the head is born (Rule E. 25). These duties are intended to ensure, in particular, that puerperal fever and pemphigus neonatorum will not be spread, and that ophthalmia neonatorum will not be contracted. Further, the local supervising authority may suspend a midwife, with the object of preventing the spread of infection, for such period as may be necessary for disinfection in accordance with Rule E. 9, (Rule F. 1), reporting the facts to the Central Midwives Board, and, if the period is more than twenty-four hours, the reasons for its prolongation. A midwife so suspended, if not in default, is entitled to reasonable compensation for loss of practice (*b*). (See also title MIDWIVES.) [477]

Carriers of Infection.—The problem of the transmission of infection is intimately related with the occurrence of what are called "carriers." Their significance has already been mentioned (*ante*, p. 203). The term is used in law only in relation to two classes of disease, viz. enteric fever (which includes typhoid and the paratyphoids) and dysentery (which includes bacillary and amœbic dysenteries) (*c*). Under Part III. of the First Schedule to the Public Health (Infectious Diseases) Regulations, 1927, if the M.O.H. considers it desirable for the prevention of the spread of infection from enteric fever or dysentery that a particular person should discontinue any occupation connected with the preparation or handling of food or drink, he must report to the authority, who may issue a notice requiring the person in question to discontinue that occupation. Alternatively if the M.O.H. suspects that any person in the area who is employed in any trade or business connected with the preparation or handling of food or drink is a carrier of infection from enteric fever or dysentery, he must report to the authority, who may give the manager of the business notice in writing that it is necessary for the M.O.H., or a medical officer acting on his behalf, to examine the suspect. All reasonable assistance in the matter must be afforded by the manager and everyone else concerned. If the examination or any bacteriological or protozoological reports confirm the suspicion, the authority may serve notices in writing upon the manager and the suspected person, excluding the latter from this and any other occupation involving the preparation and handling of food for a specified time. The above-mentioned circumstances permit of relatively straightforward action, but carriers of the enteric fevers and dysentery may be a danger to other persons although not engaged in food-handling. They may remain carriers for long periods and no restrictive measures can be taken. It is customary to advise such persons and their relatives as to the risk of infection and the precautions which should be taken, especially as to disposal of excrement, personal cleanliness after defæcation and the washing and disinfection of under-clothing.

Carriers of other types of infection, such as diphtheria, are even more common. In most cases the carrier state is not of long duration and there is frequently a recent history of acute symptoms which may justify the view that the person may be suffering from the particular infectious

(b) Midwives Act, 1926, s. 2; 11 Statutes 783.

(c) Public Health (Infectious Diseases) Regulations, 1927, 1st Sched., Part III. S.R. & O., 1927, No. 1004.

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disease. If so, and if the disease is one to which the various measures of the law may be applied (see definitions of "infectious disease," *ante*, p. 205), appropriate action may be taken. Diphtheria carriers are frequently dealt with in this way, but although the legality of describing a carrier as a person suffering from a disease does not appear to have been successfully questioned, an M.O.H. who contemplates the compulsory removal of such a person to hospital should have the possibility in mind. Exclusion of carriers from attendance at school presents no difficulty, the Education Code does not require actual contraction or manifestation of disease as a precedent to exclusion, but only the need or desirability of preventing the spread of disease (*d*). [478]

IMMUNISATION.

Increasing importance is attached to methods of inducing artificial immunity to infectious disease, known under the general term "immunisation." The best known instance of this procedure is vaccination against smallpox, the law and administration of which is dealt with elsewhere. (See title VACCINATION.)

The law with regard to immunisation against other diseases is not specific. A local authority may provide a temporary supply of medicine for the poorer inhabitants of their district, subject to the sanction of the M. of H. (*e*), and a general sanction to supply diphtheria antitoxin, not specially earmarked for treatment, for the poorer inhabitants, and also serum for the treatment of any class of persons suffering from cerebro-spinal fever has been given (see *ante*, p. 221). It would appear that the M. of H. could under sect. 133 sanction any form of immunisation if a local authority apply to him. The wide terms of sect. 1 of the Maternity and Child Welfare Act, 1918 (*f*), and sect. 80 of the Education Act, 1921 (*g*), seem to afford sufficient power to local authorities to provide facilities for immunisation both of children under school age and school children as part of the appropriate schemes. The M. of H. has drawn the attention of authorities to the advantages of immunisation against diphtheria and the methods which it is desirable to employ (*h*). There is, however, no power to enforce the acceptance of any facilities offered. In every case a written consent should be obtained from the person or his parents. The practice varies in different areas; in some districts children of all ages are gathered at schools for the purpose, in others immunisation is carried out at child welfare clinics and in others at special sessions and special places arranged by the local authority. [479]

SANITARY MEASURES AGAINST INFECTION.

While most of the infectious diseases which prevail in this country in modern times are transmitted by direct infection from person to person during close contact (minute excretions from the mouth and nose carrying the infective agents through the air at short range), some diseases may be conveyed by contamination of food or drink, *e.g.* cholera, enteric fever, dysentery, diarrhoea and food-poisoning. The provision, therefore, of pure water-supplies, the proper disposal of sewage, the prevention of contamination of food and drink,

(*d*) Code of Regulations for Public Elementary Schools, Arts. 20 (*b*) and 22.

(*e*) P.H.A., 1875, s. 133; 13 Statutes 679.

(*f*) 11 Statutes 742.

(*g*) 7 Statutes 174.

(*h*) M. of H., memo 170/Med., November, 1932.

especially with faecal matter, the prevention of accumulations of refuse in which flies (which may act as carriers of infection) may breed and the abolition of the breeding-places of other insects, are an essential part of the prevention of infectious diseases. The comparative freedom of this country from diseases spread by such means is a measure of the attention which has been devoted to sanitation in the past, but occasional outbreaks which still occur indicate the importance of constant attention to such matters. In particular, use should be made of the power to close polluted wells (*i*), to prevent pollution of rivers (*k*), to deal with pools, ditches, gutters, watercourses, privies, urinals, cesspools, drains and ashpits or with accumulations of refuse under the nuisance provisions of the P.H.A., 1875 (*l*), with offensive watercourses and collections of filth (especially of horse manure) (*m*) and to seize unsound food (*n*). The framing of bye-laws for the prevention of nuisances, for the cleansing of earth-closets, cesspools, etc., for the conveyance of refuse, night-soil, etc., and for the regulation of offensive trades and slaughterhouses have all a bearing on the prevention of infectious disease. In fact there are few provisions in public health law which have not a connection, direct or remote, with this problem. Their influence, however, upon the diseases which are now common is slight, and perhaps more importance may be attached to the prevention of overcrowding of dwelling-houses by an enforcement of the provisions of Part I. of the Housing Act, 1935. [480]

LONDON

Notification.—When the law as to public health in London was consolidated, the provisions of the Infectious Disease (Notification) Act, 1889, were replaced by sects. 55 to 57 of the P.H. (London) Act, 1891 (*o*). The sanitary authorities in London are the metropolitan borough councils and the Common Council of the City, and sect. 56 allows a sanitary authority as respects their area, and the L.C.C. in respect of the whole of the county, with the approval of the M. of H., to add to the list of notifiable infectious diseases specifically mentioned in sect. 55. Fees paid to medical practitioners do not disqualify them from serving in any public office (sect. 57 (1)), and an M.O.H. attending a patient is entitled to the same fees as an ordinary medical practitioner (sect. 57 (2)). [481]

Prevention.—Similarly, various provisions of the P.H.A., 1875, and the Infectious Disease (Prevention) Act, 1890, were replaced by sects. 58 to 74 of the Act of 1891 (*p*). All or any of these provisions may by order of the sanitary authority and with the approval of the M. of H. be applied to diseases other than those specifically mentioned in sect. 55 (8) of the Act (sect. 58). Sanitary authorities must provide means for the disinfection of bedding, clothing and other infected articles and may combine or contract for the purpose (sect. 59). If the master or owner of premises fails to do so, a sanitary authority must

(i) P.H.A., 1875, s. 70; 13 Statutes 654.

(k) Rivers Pollution Prevention Acts, 1876 and 1893; 20 Statutes 316, 345.

(l) P.H.A., 1875, ss. 91-111; 13 Statutes 661-670.

(m) *Ibid.*, ss. 48-50; 13 Statutes 646, 647.

(n) *Ibid.*, ss. 116-119; 13 Statutes 672, 673.

(o) 11 Statutes 1059-1062.

(p) *Ibid.*, 1062-1070.

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disinfect premises and any articles therein on certification by the M.O.H. and must during such disinfection, provide, free of charge, temporary accommodation for persons who are compelled to leave their dwellings and make compensation for any unnecessary damage, and when they destroy any article they must compensate the owner thereof (sect. 60). Bedding, clothing, etc., may be removed for disinfection after due notice and compensation must be paid for any unnecessary damage or any article destroyed (sect. 61). The throwing of infectious rubbish into an ash-bin, etc., is unlawful, and sanitary authorities must on request provide facilities for destruction or disinfection of such rubbish (sect. 62). A fine of £20 may be imposed for letting premises, including inns, in which infectious persons have been lodging, without having the premises certified as disinfected to the satisfaction of a medical practitioner (sect. 63). Sect. 64 also imposes a penalty on persons letting houses who make a false statement as to infectious disease, and sect. 65 on a person who ceases to occupy a house without disinfection or notice to the owner, or who makes a false answer to inquiries whether any person has therein been suffering from infectious disease. Sect. 66 provides for the removal to hospital on a justice's order of infected persons who are without proper lodging, and a sanitary authority may make bye-laws for the removal to and retention in hospital of infected patients. Sect. 67 provides for the detention of persons in a hospital under the authority of a justice's order. A person suffering from a dangerous infectious disease must not expose himself in a public place without proper precautions having been taken (sect. 68), and sect. 69 prohibits a person suffering from a dangerous infectious disease from milking animals, picking fruit, or engaging in any occupation connected with food or any other business in a manner likely to spread the disease. Sect. 70 prohibits the conveyance of infected persons in public vehicles. Sect. 71 provides for the inspection of dairies and allows a supply of milk to be stopped.

Sect. 100 of the Act of 1891 (*g*) gives the L.C.C. power to take proceedings on default of the sanitary authority, but this provision does not apply to the City (sect. 133). Sects. 101, 135 allow the M. of H., on complaint to remedy default by a sanitary authority.

Sect. 25 of the L.C.C. (General Powers) Act, 1928 (*r*), requires persons in charge of premises in which is lying the body of a person who has died from any infectious disease to which sect. 55 of the P.H. (London) Act, 1891, applies, to take steps to prevent persons from coming into contact with the body unnecessarily. Sect. 27 of the Act of 1928 empowers a justice, on complaint by an M.O.H., to grant a warrant to enter and medically examine the inmates of a common lodging-house in which it is believed there is a person suffering from infectious disease to which sect. 55 of the Act of 1891 applies. [482]

Burial, etc.—Under sect. 89 of the Act of 1891 (*s*) a justice may order the removal to a mortuary and/or burial within a limited time in cases where (1) the body of a person who has died of any infectious disease is retained in a room in which persons live or sleep; (2) the body of a person who has died of "a dangerous infectious disease" is retained

(*g*) 11 Statutes 1081.

(*s*) *Ibid.*, 1074.

(*r*) *Ibid.*, 1408.

without the sanction of the M.O.H. or medical practitioner for more than forty-eight hours in any place being used at the time as a dwelling-place, sleeping-place or workroom (*l*); (3) any dead body which is retained in a house or room so as to endanger the health of the inmates thereof or of neighbouring premises. Costs of removal to a mortuary are payable by the sanitary authority. Unless relatives bury the body the burial must be performed by the relieving officer, and costs of burial are borne by the L.C.C. as public assistance authority and are recoverable from persons legally liable to pay the cost of burial.

Under sect. 73 of the Act of 1891 (*u*) the body of a person dying from dangerous infectious disease in a hospital must be removed direct from the hospital premises to the place of burial if a medical officer or medical practitioner certifies that this is desirable. Sect. 74 provides penalties in cases where (1) a person uses a public conveyance, other than a hearse, for conveying the body of a person who has died from a dangerous infectious disease without previously notifying the owner or driver; (2) the owner or driver does not, immediately after the vehicle has to his knowledge been so used, provide for its disinfection.

"Dangerous infectious disease" means the diseases mentioned in sect. 55 of the Act of 1891, and any other disease to which the provision has been applied by order (sect. 58). [483]

Epidemic Diseases.—Sect. 113 and the First Schedule to the P.H. (London) Act, 1891 (*a*), apply to London, sects. 130, 134, 135 and 140 of the P.H.A., 1875, as to the issue of regulations by the M. of H., and sect. 82 of the Act of 1891 provides that sanitary authorities (metropolitan borough councils and the City corporation) are to execute the regulations. The Minister may combine sanitary authorities for this purpose (sect. 84).

The M. of H. under sect. 13 of the L.C.C. (General Powers) Act, 1893 (*b*), may assign to the L.C.C. any powers and duties under the epidemic regulations and by order assign to the L.C.C. any powers and duties of a sanitary authority who fail to execute those regulations.

For treatment, see "Hospital Services (London)."

The corporation of the City of London act as the port sanitary authority for the port of London, and the Port Sanitary Regulations, 1933 (see *ante*, p. 229), extend to them in their capacity of port sanitary authority. [484]

(*l*) S. 72 of the Act makes such a retention unlawful.

(*u*) 11 Statutes 1069.

(*a*) *Ibid.*, 1087, 1101.

(*b*) *Ibid.*, 1115.

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TABLE I.—INFECTIOUS DISEASES NOTIFIABLE TO MEDICAL OFFICER OF HEALTH.

Disease.	Synonyms.	Act, Order or Regulation imposing Notification or Report.	Persons Responsible.	Form of Notification prescribed by—	Remarks.
Smallpox.	Varicella, variola major, variola minor, alastrim.	Infectious Disease (Notification) Acts, 1889 and 1899.	(1) Medical practitioner in attendance. (2) (a) Head of family. (b) Nearest relative present or in attendance. (c) Person in charge of patient, or in attendance. (d) Occupier of building. (Each in default of the person preceding him.)	Public Health (Notification of Infectious Disease) Regulations, 1918 (c).	Every case to be reported immediately by M.O.H. to M.O.H. and county M.O.H. (d).
Cholera.	—	Do.	Do.	Do.	Do.
Diphtheria.	Includes membranous croup and all diseases to which the word "diphtheritic" is appended.	Do.	Do.	Do.	—
Erysipelas.	—	Do.	Do.	Do.	—
Scarlet Fever.	Scarlatina, febris rubra.	Do.	Do.	Do.	—
Typhus Fever.	Typhus, exanthematic typhus.	Do.	Do.	Do.	Every case to be reported immediately by M.O.H. to M.O.H. and county M.O.H. L.A., on report of M.O.H., may by no-

lice require measures to be taken for destruction of lice in building and on persons occupying it, and segregation of inmates until de-loused (c).

L.A., on report of M.O.H., may by notice call upon an infective person to discontinue work involving preparation or handling of food or drink; and also to take specified measures to prevent the spread of infection. Power also to arrange examination of suspected carrier of infection and, if suspicion confirmed, to ex-clude him from above-mentioned occupations (f).

Typhoid Fever.	Typhus abdominalis.	Do.	Do.	Do.	Do.
Enteric Fever.	Includes typhoid fevers and the para-typhoid fevers.	Do.	Do.	Do.	Do.

- (c) S.R. & O., 1918, No. 67.
 (d) Sanitary Officers (Outside London) Regulations, 1935, Art. 17 (7); S.R. & O., 1935, No. 1110.
 (e) Public Health (Infectious Diseases) Regulations, 1927, Sched. I., Part II.; S.R. & O., No. 1004.
 (f) *Ibid.*, Sched. I., Part III.

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Disease.	Synonyma.	Act, Order or Regulation imposing Notification or Report.	Persons Responsible.	Form of Notification prescribed by—	Remarks.
Relapsing Fever.	Typhus recurrens.	Infectious Disease (Notification) Acts, 1889 and 1899.	(1) Medical practitioner in attendance. (2) (a) Head of family. (b) Nearest relative present or in attendance. (c) Person in charge of patient or in attendance. (d) Occupier of building. (Each in default of the person preceding him.)	Public Health (Notification of Infectious Disease) Regulations, 1918.	Similar measures to be taken as in typhus fever.
Continued Fever.	A vague term, probably intended as a synonym for enteric and typhoid fevers, but permitting notification of any prolonged febrile disease.	Do.	Do.	Do.	—
Puerperal Fever.	Includes a number of diseases of which those most commonly notified are puerperal sepsis, puerperal pyrexia, puerperal septicaemia and puerperal pyæmia.	Do.	Do.	Public Health (Notification of Puerperal Fever and Puerperal Pyrexia) Regulations, 1920 (g).	—
Plague.	Bubonic, pneumonic or septicaemic plague, Pest.	Epidemic Regulations: Notification of Cases of	Do.	Public Health (Notification of Infectious	Every case to be reported immediately

Plague (General), 1900 (h).	Disease) Regulations, 1918 (i).	by M.O.H. to M. of H. and county M.O.H. (k).
Cerebro-spinal menin- gitis, posterior basal meningitis.	Do.	Do.
Acute anterior poliomye- litis, epidemic poliomye- litis, Heine - Meckel disease, acute infantile paralysis.	Do.	—

(g) S.R. & O., 1926, No. 972.

(h) S.R. & O., 1900, No. 695.

(i) S.R. & O., 1918, No. 67.

(k) Sanitary Officers (Outside London) Regulations, 1935, Art. 17 (7) : S.R. & O., 1935, No. 1110.

(l) S.R. & O., 1912, No. 1229.

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Disease.	Synonyms.	Act, Order or Regulation or Imposing Notification or Report.	Persons Responsible.	Form of Notification prescribed by—	Remarks.
Acute Encephalitis Lethargica.	Epidemic encephalitis, sleepy sickness.	Public Health (Acute Encephalitis Lethargica and Acute Polio-Encephalitis) Regulations, 1918 and 1919 (<i>m</i>).	Medical practitioner in attendance only.	Public Health (Notification of Infectious Disease) Regulations, (1918) (<i>n</i>).	—
Acute Polio-encephalitis.	Acute polio-encephalomyelitis.	Do.	Do.	Do.	—
Ophthalmia Neonatorum.	Gonorrhoeal or purulent conjunctivitis of newly born. (Defined as "a purulent discharge from the eyes of an infant within twenty-one days from the date of birth.")	Public Health (Ophthalmia Neonatorum) Regulations, 1926 and 1928 (<i>o</i>).	Do.	Do. (but date of birth of child, date of onset of disease and name and address of parent or person in charge of child must also be given) (<i>o</i>).	—
Puerperal Pyrexia.	This is not a disease but a term intended to describe a number of febrile states occurring within twenty-one days after childbirth with a sustained or recurrent temperature of 100.4° F. during a period of twenty-four hours.	Public Health (Notification of Puerperal Fever and Puerperal Pyrexia) Regulations, 1926 and 1928 (<i>p</i>).	Do.	Public Health (Notification of Puerperal Fever and Puerperal Pyrexia) Regulations, 1926 (<i>p</i>).	—
Malaria.	Ague.	Public Health (Infectious Diseases) Regulations, 1927 (<i>q</i>).	Do.	Public Health (Notification of Infectious Disease) Regulations,	Every indigenous case to be reported immediately by

<p>1918 (r). [But special form prescribed for cases of therapeutic malarial in which recurrence is anticipated (s).]</p>			<p>1918 (r). [But special form prescribed for cases of therapeutic malarial in which recurrence is anticipated (s).]</p>	<p>M.O.H. to M. of H. and county M.O.H. L.A. may appoint special M.O. to investigate, examine persons and prevent spread of infection, if two or more such cases occur. In any case M.O.H. to take measures as to treatment and prevention if necessary (t).</p>	<p>L.A., on report of M.O.H., may by notice call upon an infected person to discontinue work involving preparation or handling of food or drink; and also to take specified measures to prevent the spread of infection. Power also to arrange examination of suspected carrier of infection and, if suspicion confirmed, to exclude him from above - mentioned occupations (q).</p>
<p>Dysentery.</p>	<p>Amoebic dysentery, bacillary dysentery.</p>	<p>Public Health (Infectious Diseases) Regulations, 1927 (q).</p>	<p>Public Health (Infectious Diseases) Regulations, 1927 (q).</p>	<p>Medical Practitioner in attendance only.</p>	<p>Public Health (Notification of Infectious Disease) Regulations, 1918 (r).</p>

(m) S.R. & O., 1918, No. 1741 and 1919, No. 2048.
 (n) S.R. & O., 1926, No. 971 and 1928, No. 419.
 (o) S.R. & O., 1927, No. 1004.
 (p) S.R. & O., 1927, No. 1004., Sched. II.

(m) S.R. & O., 1918, No. 67.
 (n) S.R. & O., 1926, No. 972, and 1928, No. 420.
 (o) S.R. & O., 1918, No. 67.
 (p) *Ibid.*, Sched. I., Part I.

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Disease.	Synonyms.	Act, Order or Regulation imposing Notification or Report.	Persons Responsible.	Form of Notification prescribed by—	Remarks.
Acute Primary Pneumonia.	Includes all forms of acute pneumonia which are not secondary to, or complications of, some other disease.	Public Health (Infectious Diseases) Regulations, 1927 (a).	Medical practitioner in attendance only.	Public Health (Notification of Infectious Disease) Regulations, 1918 (a).	M.O.H. must investigate source of infection of any case coming to his knowledge and take steps to prevent infection, if such course is necessary or desirable; and verify diagnosis if no medical practitioner in attendance (b).
Acute Influenzal Pneumonia.	Pneumonia complicating, or secondary to, influenza.	Do.	Do.	Do.	Do.
Tuberculosis.	Tubercle. Includes phthisis, consumption, acute hydrocephalus, tubercles, mesenterica, Pott's curvature, spinal caries, hip-joint disease, lupus, scrofuloderma, scrofula, etc., and all diseases to which the words "tuberculous" or "tubercular" are attached.	Public Health (Tuberculosis) Regulations, 1930 (c).	Medical practitioner in attendance and School Medical Inspector. Also, Medical Officers of Port Sanatoria must notify patients admitted and discharged each week.	Public Health (Tuberculosis) Regulations, 1930 (c).	For further details, see title TUBERCULOSIS.

(a) S.R. & O., 1927, No. 1004.

(b) S.R. & O., 1927, No. 1004, Art. 10.

(a) S.R. & O., 1918, No. 67.

(c) Public Health (Tuberculosis) Regulations, 1930; S.R. & O., 1930, No. 572.

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TABLE II.—INFECTIOUS DISEASES NOT GENERALLY NOTIFIABLE.
(School children suffering from, or in contact with, such of these diseases as affect them should be intimated to the school medical officer under regulations of the local education authority (a)).

Disease.	Synonyms.
Measles — — — — —	Morbilli, rubella.
German measles — — — — —	Rubella.
Whooping cough — — — — —	Pertussis.
Chicken-pox — — — — —	Varicella.
Mumps — — — — —	Parotitis.
Diarrhoea — — — — —	Infective diarrhoea, enteritis, infantile diarrhoea.
Pemphigus neonatorum.	
Influenza (b).	
Food poisoning — — — — —	Ptomaine poisoning (includes bacterial food poisoning and botulism).
Septic sore throat — — — — —	Septic or streptococcal tonsillitis.
Itch — — — — —	Scabies.
Pediculosis — — — — —	Infestation with lice.
Ringworm — — — — —	Tinea, trichophytosis.
Acute rheumatism — — — — —	Rheumatic fever.
Epidemic jaundice — — — — —	Epidemic catarrhal jaundice, icterus.
Glandular fever — — — — —	Infective mononucleosis.
Leprosy.	
Yellow fever (c).	
Weil's disease — — — — —	Leptospirosis.
Syphilis (d) — — — — —	Pox.
Gonorrhoea (d) — — — — —	Clap.
Soft Chancre (d) — — — — —	Chancroid, soft sore.

(a) See Memorandum on Closure of and Exclusion from School, issued by M. of H. and Board of Education, 1927, p. 11, par. (24).

(b) For influenzal pneumonia, see Table I., p. 254.

(c) See Infectious Disease on Ships, *ante*, p. 229.

(d) See title VENEREAL DISEASES.

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TABLE III.—INFECTIOUS DISEASES MAINLY AFFECTING ANIMALS, BUT TRANSMISSIBLE TO MAN.

Disease.	Synonyms.	Remarks.
Undulant Fever.	Malta fever, abortus fever.	Not compulsorily notifiable, but may be notified as continued fever. (See Table I., <i>ante</i> , p. 250.)
Psittacosis	Parrot disease.	Because of the danger of the transmission of this disease to man, importation of parrots, love-birds, macaws, cockatoos, lorries, lorikeets, etc., is prohibited unless for medical or veterinary research, or consigned to Zoological Society of London or to persons specially authorised by M. of H. to import them for other purposes than sale (e).
Glanders.	Farcy.	Cases occurring among animals and notified to Inspector of L.A. under Diseases of Animals Acts must be reported forthwith by him to M.O.H. (f).
Rabies.	Hydrophobia.	Do. (g)
Anthrax.	Wool-sorters' disease. Malignant pustule.	Do. (h) Any case of anthrax occurring in a factory or workshop must be notified by employer and by medical practitioner to H.M. Inspector of Factories (i). Wool or hair from certain countries may be imported only at Liverpool and must be disinfected there (k). Importation of shaving brushes from Japan prohibited (l).
Actinomycosis.	—	—
Tetanus.	Lockjaw.	—

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- (e) Parrots (Prohibition of Import) Regulations, 1930; S.R. & O., 1930, No. 290.
- (f) Animals (Notification of Disease) Order, 1919 (S.R. & O., 1919, No. 219), and Glanders or Farey Order, 1929 (S.R. & O., 1929, No. 718).
- (g) Animals (Notification of Disease) Order, 1919 (S.R. & O., 1919, No. 219), and Rabies Order, 1919 (S.R. & O., 1919, No. 464).
- (h) Animals (Notification of Disease) Order, 1919 (S.R. & O., 1919, No. 219), and Anthrax Order, 1928 (S.R. & O., 1928, No. 656).
- (i) Factory and Workshop Act, 1901, s. 73; 8 Statutes 554.
- (k) Order regulating importation of goods likely to be infected with anthrax (S.R. & O., 1921, No. 352).
- (l) Anthrax Prevention (Shaving Brushes) Order, 1920; S.R. & O., 1920, No. 253.

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APPENDIX.

WORKINGTON CORPORATION ACT, 1934 (24 & 25 Geo. 5, c. xxvi.).

MEDICAL PRACTITIONERS TO NOTIFY CASES OF FOOD POISONING.

82.—(1) Every medical practitioner attending on a person in the borough who is or is suspected to be suffering from food poisoning shall forthwith on becoming aware that such person is or is suspected to be so suffering send to the medical officer a notification of the case stating the name of such person and the place at which such person is.

(2) The corporation shall pay to every medical practitioner for each notification duly sent by him in accordance with this section a fee of two shillings and sixpence if the case occurs in his private practice and of one shilling if the case occurs in his practice of medical officer of any public body or institution.

(3) Every person required by this section to give notice who fails to give the same in accordance with this section shall be liable to a penalty not exceeding forty shillings.

N.B.—Sect. 122 of the Weston-super-Mare U.D.C. Act, 1934 (24 & 25 Geo. 5, c. xciv.), is similar except that the words "in the borough" in lines 1 and 2 are omitted. [486]

INFORMATIONS

See SUMMARY PROCEEDINGS.

INJUNCTIONS

See ACTIONS BY AND AGAINST LOCAL AUTHORITIES.

INJURIOUS AFFECTION

See COMPENSATION FOR TOWN PLANNING; COMPULSORY PURCHASE OF LAND.

INJURIOUS WEEDS

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ADMINISTRATION - - -	259		

See also titles : AGRICULTURAL COMMITTEES ;
 AGRICULTURE ;
 AGRICULTURE AND FISHERIES, MINISTRY OF.

General Powers and Duties of Local Authorities.—Powers of dealing with injurious weeds were conferred on war agricultural committees by orders (now expired) made under the Defence of the Realm Acts during the Great War, and were also included in the Corn Production Acts, 1917 and 1920 (a). On the repeal of the Corn Production Acts by the Corn Production Acts (Repeal) Act, 1921 (b), sect. 1 (c) of that Act provided that all powers with respect to the destruction of injurious weeds should continue to be exercisable as if the provisions of the Acts of 1917 and 1920, specified in the Schedule to the Act of 1921, had not been repealed, but were continued in force as set out with the necessary modifications in the Schedule.

Under paragraph (1) of the Schedule the Minister of Agriculture and Fisheries (c), if satisfied that there are injurious weeds, to which the Schedule applies, growing on any land, may serve upon the occupier of the land a notice in writing requiring him to cut down or destroy the weeds in the manner and within the time specified in the notice.

The injurious weeds to which the Schedule applies are : (1) Spear Thistle (*Carduus lanceolatus* L.), (2) Creeping or Field Thistle (*Carduus arvensis* Curt.), (3) Curled Dock (*Rumex crispus* L.), (4) Broadleaved Dock (*Rumex obtusifolius* L.) and (5) Ragwort (*Senecio Jacobaea* L.) (Schedule, para. 8). [487]

The expression "occupier" means, in the case of any public road (d), the authority by whom the road is being maintained, and in the case of unoccupied land the person entitled to the occupation thereof (e) (Schedule, para. 9).

(a) 7 & 8 Geo. 5, c. 46. The Act referred to as the Corn Production Act, 1920; was really Part I. of the Agriculture Act, 1920 (1 Statutes 76).

(b) 1 Statutes 77.

(c) Referred to in this title as "The Minister."

(d) This seems to cover any road over which the public has a right of passage as well as roads repairable by the inhabitants at large.

(e) This definition does not appear to deal with the case of common land or manorial waste where no individual is entitled to exclusive occupation. In the case of land over which grazing rights are sold or let by the season, without creating a tenancy, the better opinion seems to be that the purchaser or hirer of the grazing rights is not the occupier, and notice should be served on the person who is entitled to occupation subject to the grazing rights.

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Where notice is served on a tenant, a copy thereof must be served on the landlord at the same time (Schedule, para. 2). The term "landlord" is not defined, but the term "owner," which does not appear in the Schedule except in the definition clause (para. 9), is expressed to include a person entitled for his life or other limited estate; for the meaning of the term "landlord" in relation to an agricultural holding, reference may be made to sect. 57 (1) of the Agricultural Holdings Act, 1923 (*f*), where, for the purpose of that Act, "landlord" is defined as meaning any person for the time being entitled to receive the rents and profits of any land; this definition includes a mortgagee in possession, and probably the word "landlord" when used in the Schedule to the Act of 1921 in relation to agricultural land should be interpreted similarly. The definition of "owner" seems to have been reproduced unnecessarily in the Schedule to the Act of 1921; it appears in sect. 4 (12) of the Act of 1920, but the term "landlord" is not defined in that statute, nor in the Act of 1917.

Unreasonable failure by the occupier to comply with a notice served as aforesaid renders him liable on summary conviction to a fine not exceeding £20, and to a further fine not exceeding 20s. for every day during which the default continues after conviction (*g*). Proceedings are not to be instituted except by the Minister (*h*), and the Minister may execute any work specified in the notice and recover summarily as a civil debt from the person in default the reasonable cost of executing the work in a proper manner (Schedule, para. 3). Proceedings for a penalty are not prejudiced by the fact that the Minister has executed the work specified in the notice.

The Minister, or any body of persons executing any powers of the Minister on his behalf, may authorise any person to enter on and inspect any land for the purpose of carrying the Schedule into effect; any such person must produce his authority if required, and in any case the occupier of the land must be served with notice of the date on which the inspection will take place (Schedule, para. 4). Prevention or obstruction of the entry of an authorised person is punishable on summary conviction by a fine not exceeding £20.

Service of notice on an occupier (*i*) may be effected personally, or by registered post or by leaving the notice at the occupier's last known place of abode in the United Kingdom; if any person (*semble*, occupier or landlord) upon whom notice is to be served is absent from the United Kingdom and his usual place of abode in the United Kingdom cannot be found after diligent inquiry, service may be effected by affixing a copy of the notice on some conspicuous part of the land (Schedule, para. 5). There appears to be no power of describing an unknown landlord or occupier merely as "the landlord" or "the occupier" for the purpose of service.

The Minister may authorise any county or county borough agricultural committee to exercise any of his powers under the Schedule (Schedule, para. 6).

Expenses of the Minister, up to an amount approved by the Treasury, are defrayed out of Government funds (Schedule, para. 7). [487A]

(*f*) 1 Statutes 113.

(*g*) A fresh information should be laid to enforce the daily penalty after conviction: *R. v. Struve* (1895), 50 J. P. 584; 43 Digest 845, 46.

(*h*) But see *post*, p. 259, as to the powers of agricultural committees.

(*i*) No method of service on a landlord is prescribed, unless, *semble*, he is absent from the United Kingdom.

The Agricultural Committees (Injurious Weeds) Order, 1921 (*k*), made by the Minister, delegates to the agricultural committees of counties and county boroughs (where an agricultural committee exists) the powers of the Minister under the Schedule to the Act of 1921, subject to such directions as to approval of expenditure or otherwise as may be given by the Minister; delegated powers are exercisable by committees within their respective areas. No proceedings may be taken for an offence under the Schedule without the previous consent of the Minister, and this limitation extends to the offence of preventing the entry of, or obstructing, an authorised person. The powers delegated by the Minister to an agricultural committee may, under sect. 31 (1) of the Agriculture Act, 1920 (*l*), be delegated by the committee to a sub-committee. For the appointment of sub-committees of an agricultural committee, see sect. 7 (3) of M. of A. & F. Act, 1919 (*m*). The expenses of an agricultural committee incurred in the exercise of the delegated powers are payable by the Minister within the limits approved by him.

A form of notice to occupiers or landlords is not prescribed, but any notice under para. (1) of the Schedule to the Act of 1921 should identify with precision the particular parcels of land to which it relates, and should specify, by the nomenclature used in the Schedule, the varieties of weeds which the occupier is required to cut down or destroy.

In county boroughs and other areas for which no agricultural committee has been formed, the administration of the Schedule is undertaken by the Minister. [488]

Administration.—The extent to which agricultural committees enforce the destruction of weeds varies considerably from county to county, and a reference to the Reports of the Land Division of the M. of A. & F. shows that the number of notices served annually varies from thousands in some areas to a trivial number in others. The principal difficulties in the way of effective administration are:

- (i.) Owing to the seasonal nature of the work any serious campaign against weeds involves the recruitment of a suitably qualified temporary staff.
- (ii.) The weeds included in the Schedule are so widespread that an agricultural committee hesitate to impose on farmers the heavy expense of eradication.
- (iii.) Where a local authority inspecting staff is not available to report on weeds and initiate action, reliance must be placed on complaints from interested parties, which not infrequently are put forward as a result of some local dispute, with the result that the local authority may be placed in the difficult position of applying pressure in an isolated case, whilst scores of equally bad cases exist in the same vicinity.

Where a special staff is not employed for the removal of injurious weeds it is usual for the administration of the statute to be entrusted to the county land agent, chief agricultural officer, or some similar officer whose duties cause him to travel in agricultural areas of the county;

(*k*) S.R. & O., 1926, No. 1498, p. 699.

(*l*) 1 Statutes 76.

(*m*) 3 Statutes 458. The Minister has the appointment of not more than one-third of the members of any sub-committee to which powers are delegated (*ibid.*, s. 7 (4) (b)).

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in some cases assistance is given by the highway staff and other travelling officers who report (but do not deal with) bad cases of weed infestation which come under their notice. The agricultural education staff should deal with injurious weeds in a purely advisory capacity; it is undesirable that these officers should be concerned with enforcement.

Agricultural organisations, such as the National Farmers Union, may be asked to co-operate by reporting cases for investigation.

As there is a tendency for reports to be delayed until very near to the time at which seeds will be scattered and damage done, it is necessary that the committee dealing with injurious weeds should be able to meet frequently during the summer, or, alternatively, that the chairman should be empowered to authorise the issue and enforcement of notices.

A frequent source of trouble is the growth of injurious weeds on building estates, road verges, and railway embankments, and some good can be effected by a circular letter issued annually in May or June drawing the attention of housing authorities, builders, highway authorities and railway companies, to their statutory obligations. If advice is tendered as to the time for cutting and destroying weeds, regard should be had to the desirability of leaving the growth undisturbed during the nesting season, and also to the possibility of cutting weeds early enough to prevent seeding, and late enough to prevent a dangerous second growth. Advice as to operations involving the use of poisons or other drastic measures, such as spraying charlock or eradicating weeds in the course of improving pasture, should be tendered only on request and by properly qualified advisers.

In cases where a prosecution is contemplated the case must be submitted to the M. of A. & F. for authority to proceed before the information is laid, and the authority of the M. of A. & F. to prosecute must be duly proved. [488A]

Finance.—As the cost of administration is repayable to local authorities by the M. of A. & F., the Ministry should be consulted in advance of any exceptional expenditure, such as the employment of a special staff. The amount admissible for repayment in respect of normal administration is a matter for negotiation between the local authority and the M. of A. & F., and is frequently based on an allowance for general overhead charges, plus a fixed fee and travelling expenses per case. [489]

London.—No special provisions apply to London as to weeds on land, and administration is carried out by the Minister. Sect. 237 of the Port of London (Consolidation) Act, 1920 (*n*), and sect. 129 of the Thames Conservancy Act, 1932 (*o*), contain provisions against leaving cut weeds in the River Thames and against throwing weeds into the river. [490]

(*n*) 18 Statutes 671.

(*o*) 22 & 23 Geo. 5, c. xxxvii.

INQUESTS

See CORONERS.

INQUIRIES

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See also titles :

BILLS, PARLIAMENTARY AND PRIVATE ;	GOVERNMENT AND LOCAL INSPECTORS ;
COSTS ;	GOVERNMENT CONTROL ;
COUNSEL, EMPLOYMENT OF ;	HEALTH, MINISTRY OF.

Introduction.—Local inquiries are held by officials or representatives of a Government department, or in some instances by representatives of a county or county borough council, relating to various activities of local authorities which require approval or sanction. Before sanctioning a loan for any scheme which a local authority proposes to carry out, it is the practice of the Minister of Health to satisfy himself that the particular works are needed, that they are well and economically planned, and that the financial position of the area warrants the borrowing of money for the purpose. In such circumstances it is customary for the Minister to direct a local inquiry to be held by one of his inspectors. Other matters which give rise to a local inquiry are schemes for the alteration of areas or the creation of a new borough under Part VI. of the L.G.A., 1933, town planning schemes, orders for the compulsory purchase of land, the promotion of a provisional order, or the confirmation of a clearance order under Part I. of the Housing Act, 1930. A distinction should, however, be drawn between local inquiries which are compulsory and those which are optional; this distinction is indicated in the list of statutory authorities, *post*, p. 264. Most of the local inquiries by Government departments are directed by the M. of H., the M. of T., the H.O., the Board of Education or the Electricity Commissioners. In addition, county councils are required to hold local inquiries in connection with such matters as the alteration of the areas of urban districts, rural districts and parishes under sect. 141 of the L.G.A., 1933 (*a*), the compulsory purchase of land by a parish council under sect. 168 of that Act (*b*), or the exercise of their power under sect. 16 of L.G.A., 1894 (*c*), to declare an R.D.C. to be in default.

In this title the law, practice and procedure relating to local inquiries are dealt with. It may be remarked in passing that some Acts refer to the holding of a "local inquiry" and others to a "public local inquiry," while by sect. 293 of P.H.A., 1875 (*d*), the Minister of Health is authorised to cause to be made such "inquiries" as are directed by the Act, and such "inquiries" as he sees fit in relation to matters concerning the public health in any place. The omission of the word

(a) 26 Statutes 380.

(c) 10 Statutes 788.

(b) *Ibid.*, 398.

(d) 13 Statutes 748.

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"public" seems to allow the department concerned to arrange an informal visit to the locality by an inspector for the purposes of a conference with representatives of the local authority and of a visit to the site of proposed works, and, where a power of recovering costs exists, would allow the department to recover the cost of the visit. The Minister of Health under sect. 293 of the P.H.A., 1875, is empowered to instruct a medical inspector to visit a locality and report on a bad outbreak of infectious disease. [491]

The practice of holding local inquiries is of comparatively recent origin; it seems to have been originated by the Poor Law Amendment Act, 1834, and was also utilised on the establishment of sanitary authorities by the P.H.A., 1848. Before then, England was still a country of local self-government; there was no such relation as now exists between local authorities and Government departments; and the latter evinced little desire to exercise any control or supervision over local administration. The justices in counties and the municipal corporations in boroughs were in their own several spheres practically autonomous. Moreover, no large scheme likely to affect the private interests of a number of persons injuriously was likely to be undertaken by these bodies. [492]

With the nineteenth century, however, bringing with it agitation for social reform, due to the influence of such men as Bentham and Chadwick, the former type of local administration passed away, and a new outlook began to appear in the minds of those in authority. The Royal Commission on the Poor Laws was set up, and a system of inquiries was instituted, under which assistant commissioners were employed to assist in the prosecution of the Commission's general inquiry. The reason for such inquiries is given in the directions of the Commission to these assistants:

"There is no comparison between the information afforded (by answers to written questions which the commission had previously circulated throughout the country) and that which could be obtained if it were in their (the commissioners') power to sift the facts and the opinions contained in the different replies by the inspection of documents and cross-examination of witnesses; if they could ascertain the state of the poor by personal inquiry among them, and the administration of the Poor Laws by being present at vestries and at the sessions of magistrates."

These assistant commissioners were appointed by the Royal Commission to inquire and to collect facts. But the Commission reported—and their recommendations were embodied in the Poor Law Amendment Act, 1834—that assistant commissioners should be appointed to examine the administration of relief in different districts and to aid in the preparation of local changes. These assistant commissioners were followed by the inspectors appointed under the Poor Law Board Act, 1847, and in their turn by the "General Inspectors" of the Local Government Board and the M. of H. Local inquiries are now held on all manner of subjects, and their scope is increasing, as will be seen from a study of the provisions of recent Acts, such as the L.G.A., 1933, and the Town and Country Planning Act, 1932. [493]

The assistant commissioners were, like the "General Inspectors" of to-day, officers assigned to certain fixed districts, acting as local agents of the central department and keeping in touch with the local authorities on the one hand and the central department on the other; but they might also be required to hold inquiries on particular matters. It is this latter function which most of the present-day inspectors

fulfil. Inspectors are now appointed for the most part to investigate particular schemes in various parts of the country, and are not allotted to fixed areas. They do not necessarily specialise in a particular subject, such as poor law, or housing, or town planning, though many of them are either engineers or medical men. As to the practice of the M. of H., see pp. 320, 321 of Vol. VI.

The powers of poor law inspectors under the Poor Law Board Act, 1847, to summon witnesses, to call for the production of books, and to take evidence on oath, were finally reproduced in sect. 160 of the Poor Law Act, 1930 (e), but a more general provision has been included in sect. 290 of the L.G.A., 1933 (f).

The question of how a central department, charged with the power or duty of arriving at a decision, may or may not come to that decision, i.e. what evidence they might take into consideration and how they were to come by it, had been left for a long time to the discretion of the central departments. It is noteworthy that the leading cases on the matter, the *Arlidge Case* (g) and the *Rice Case* (h), were only decided shortly before the war, and that they contain merely meagre references to previous decisions directly bearing on the point. These cases declare that the department concerned must be allowed to follow its own usual procedure, so long as such procedure is not palpably unjust (i). The whole subject of the legality of particular steps in the general procedure cannot, however, be taken to be entirely settled. To take one matter (discussed more fully, *post*, at p. 270), controversy has existed for many years around the question whether or not the report made by an inspector after a local inquiry should be open to inspection by the public or even by the parties to the matter in dispute. The present law on the subject, according to the *Arlidge Case* (g), is that a department is justified in withholding publication. The matter was considered by the Committee on Minister's Powers, which in their report (j), issued in 1932, expressed the opinion that such reports should be open to inspection in most cases. Parliament has not, however, accepted this view, for in a standing committee of the Commons on the Bill for the Housing Act, 1935, a proposal that (*inter alia*) any objector under that Act should be entitled to obtain a copy of the report of an inspector to the Minister of Health was negatived by a large majority. On the other hand, the Minister of Transport has decided to allow to be purchased copies of any report made to him by an inspector by whom a local inquiry has been held on an appeal made to the Minister under sect. 81 of the Road Traffic Act, 1930 (k), against the refusal or grant of a road service licence. The parties to such an appeal are also informed that a copy of the report may be inspected at the office of the traffic commissioners concerned. [494]

Powers of Government Departments.—Reference has already been made, *ante*, at pp. 261, 262, to the general power of the Minister of Health to hold inquiries as he sees fit into matters concerning the public

(e) 12 Statutes 1045.

(f) 26 Statutes 459. Summarised *post*, on p. 266.

(g) *Local Government Board v. Arlidge*, [1915] A. C. 120; 33 Digest 97, 708.

(h) *Board of Education v. Rice*, [1911] A. C. 179; 19 Digest 602, 290.

(i) *Frost v. Minister of Health*, [1935] 1 K. B. 286; Digest Supp.; *Offer v. Minister of Health*, [1936] 1 K. B. 40; Digest Supp.

(j) Cmd. 4060.

(k) 23 Statutes 666.

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health. Sect. 160 of the Poor Law Act, 1930 (*l*), also allows the Minister to cause such inquiries to be held as he may consider necessary or desirable for the purposes of that Act. Such inquiries are usually held by a general inspector who may within certain limits require any person to attend and give evidence on oath or produce documents. The Minister's costs of the inquiry may be charged by him to the local authority concerned.

Sect. 290 of the L.G.A., 1933 (*m*), while providing no new power to hold general inquiries, has assimilated the powers of any person appointed by a Government department to hold an inquiry under that Act for specified purposes to those of an inspector of the M. of H. [495]

The following is a list of statutory provisions giving power to various departments to hold local inquiries.

Purpose of Inquiry.	Statute.	Government department.	Holding of Inquiry.
On authorisation or transfer of undertakings.	Tramways Act, 1870, sects. 7, 35, 42 (<i>n</i>).	M. of T. (<i>o</i>).	Optional.
On provisional order authorising gas or water undertaking.	Gas, etc., Facilities Act, 1873, sect. 13 (<i>p</i>).	Board of Trade (gas) or M. of H. (water).	Compulsory.
For purposes of Act.	P.H.A., 1875, sects. 33, 34, 53, 293 and 299 (<i>q</i>).	M. of H.	Optional.
On provisional order for inclosure.	Commons Act, 1876, sect. 10 (<i>r</i>).	M. of A. & F.	Compulsory.
Matters arising under the Act.	L.G.A., 1888, sect. 87 (<i>s</i>).	M. of H.	Optional.
Do.	P.H.A. Amendment Act, 1907, sect. 5 (<i>t</i>).	M. of H.	Do.
Default of district council or parish council to provide allotments.	Small Holdings and Allotments Act, 1908, sect. 24 (<i>u</i>).	M. of A. & F.	Compulsory.
Early closing.	Shops Act, 1912, sects. 7, 16 (<i>a</i>).	Home Sec.	Optional.
For purposes of Act.	Milk and Dairies (Consolidation) Act, 1915, sect. 15 (<i>b</i>).	M. of H.	Optional.
Do.	Electricity (Supply) Act, 1919, sect. 33 (<i>c</i>).	Electricity Commissioners.	Do.
Do.	M. of T. Act, 1919, sect. 20 (<i>d</i>).	M. of T.	Do.
Do.	Ferries (Acquisition by Local Authorities) Act, 1919, sect. 1 (<i>e</i>); L.G.A., 1933, sect. 290 (<i>f</i>).	M. of T.	Do.
Enforcement of Duties of L.A. by Board of Education.	Education Act, 1921, sect. 150 (<i>f</i>).	Board of Education.	Compulsory.

(*l*) 12 Statutes 1045.

(*m*) 26 Statutes 459.

(*n*) 20 Statutes 8, 21, 28.

(*o*) S.R. & O., 1919, No. 1440.

(*p*) 8 Statutes 1275.

(*q*) 13 Statutes 639, 640, 648, 748, 750.

(*r*) 2 Statutes 585.

(*s*) 10 Statutes 756; the holding of an inquiry is compulsory where the matter arises under *ibid.*, ss. 35, 57, 69.

(*t*) 13 Statutes 912.

(*u*) 1 Statutes 258.

(*a*) 8 Statutes 618, 623.

(*b*) *Ibid.*, 871.

(*c*) 7 Statutes 774.

(*d*) 3 Statutes 486.

(*e*) 8 Statutes 660.

(*f*) 7 Statutes 205.

Purpose of Inquiry.	Statute.	Government department.	Holding of Inquiry.
Regarding rating deductions in urban areas.	R. & V.A., 1925, Sched. II., Part III., para. 7 (g).	M. of H.	Compulsory.
For purposes of Act.	Housing Act, 1925, sect. 116 (h).	M. of H.	Optional.
Default of L.A. under Act.	P.H. (Smoke Abatement) Act, 1926, sect. 7 (i).	M. of H.	Optional.
L.G.A., 1929, sect. 3 : Combination of councils for certain purposes ; sect. 46 : Schemes for rearrangement of county districts ; sect. 57 : On default of non-county, borough or district council regarding public health functions ; sect. 129 : General power.	L.G.A., 1929, sects. 3, 46, 57, 129 (k).	M. of H.	Compulsory unless L.As. agree. Compulsory if objection.
Review of county electoral divisions.	L.G.A., 1929, sect. 50 (l).	Home Sec.	Optional.
L.G.A., 1929, sect. 31 (4). On order providing that road shall cease to be county road (sect. 37) ; on order declaring road to be county road (sect. 129), general power.	L.G.A., 1929, sects. 31 (4), 37, 129 (m) ; L.G.A., 1933, sect. 290 (7)	M. of T.	Compulsory if objection. Compulsory if requested.
For purposes of Act.	Bridges Act, 1929, sect. 9 (n).	M. of T.	Do.
Do.	Poor Law Act, 1930, sect. 160 (o).	M. of H.	Optional.
Default by county council in exercising transferred powers as to provision of houses in rural districts.	Housing Act, 1930, sect. 36 (p).	M. of H.	Do.
Default in exercise of powers by L.A. (not an R.D.C.) under Housing Act, 1925, or Housing Act, 1930.	Housing Act, 1930, sect. 52 (q).	M. of H.	Do.
Clearance order.	Housing Act, 1930, Sched. I., para. 4 (r).	M. of H.	Compulsory if objection.
Compulsory purchase orders.	Housing Act, 1930, Sched. II., Part I., para. 5 (a).	M. of H.	Do.
For purposes of Act.	Town and Country Planning Act, 1932, sect. 4. Sects. 6, 8. Sect. 36. Sched. III., Part I., para. 5. Part II., para. 4 (b).	M. of H.	Compulsory unless L.As. agree. Compulsory if requested. Compulsory if objection. Compulsory if necessary.

(g) 14 Statutes 695.

(h) 13 Statutes 1064.

(i) *Ibid.*, 1100.

(k) 10 Statutes 884, 916, 922, 968.

(l) *Ibid.*, 919.(m) *Ibid.*, 905, 912, 968.

(n) 9 Statutes 273.

(o) 12 Statutes 1045.

(p) 23 Statutes 424.

(q) *Ibid.*, 431.(r) *Ibid.*, 437.(a) *Ibid.*, 439. Amended by Part I. of Sched. VI. to Housing Act, 1935.

(b) 25 Statutes 474, 475, 480, 507, 530, 532.

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Purpose of Inquiry.	Statute.	Government department.	Holding of Inquiry.
For purposes of Act.	L.G.A., 1933, sect. 290 (c).	As to scope, see <i>post</i> , p. 266.	
For purposes of Road Traffic Act, 1930, or Road and Rail Traffic Act, 1933.	Road and Rail Traffic Act, 1933, sect. 47 (d).	M. of T.	Optional.
Default of council in not declaring area not to be built up area.	Road Traffic Act, 1934, sect. 1 (5) (c).	M. of T.	Compulsory.
Compulsory purchase of land for development.	Housing Act, 1935, sect. 4. Sect. 64. Sched. II., para. 4.	M. of H.	Compulsory if objection. Compulsory if objection. Compulsory if objection.
For purposes of Act.	Restriction of Ribbon Development Act, 1935, sect. 21.	M. of T.	Optional.

[496]

To a number of these and to other inquiries to be required in the future by Parliament, sect. 290 of the L.G.A., 1933 (f), applies. By this section, where the Secretary of State or the Minister of Health is authorised to hold an inquiry, whether under that Act or any other enactment relating to the functions of a local authority, or where the Minister of Transport is authorised to hold an inquiry under the L.G.A., 1929 (g), or the Ferries (Acquisition by Local Authorities) Act, 1919 (h), a local inquiry may be held. To the person appointed to hold such an inquiry are given certain powers, such as that of compelling the attendance of witnesses and taking evidence on oath, which powers were not as a rule expressly conferred on inspectors. The section, however, does not apply to all inquiries which a Government department, other than the Secretary of State and the M. of H. and in certain cases the M. of T., are authorised to hold. This does not, however, apply to an inquiry held for the administration of the L.G.A., 1933, itself, since by sect. 290 the powers are conferred upon any person holding an inquiry for the determination of any difference under that Act, the making or confirmation of any order or the framing of any scheme, or the giving of any consent, confirmation, sanction or approval or any other action under the Act, whether such person is appointed by the Secretary of State, Minister of Health or of Transport, or by any Board or Commissioners.

But the inspectors of some Government departments, other than the M. of H. and the Secretary of State, have been given similar powers in holding inquiries by reason of the statute authorising the local inquiry having conferred on the inspector the same powers as an inspector of the M. of H. for the purpose of an inquiry under the P.H.As. (i). [496A]

Powers of County and County Borough Councils.—A county council before they make an order under sect. 141 of L.G.A., 1933 (k), for the alteration of the boundaries of an urban district, rural district or

(c) 26 Statutes 459.

(e) 27 Statutes 596.

(g) As to these cases, see ss. 31 (4), 87 (2), 129 (2) of L.G.A., 1929; 10 Statutes 905, 912, 965.

(i) See e.g. Small Holdings and Allotments Act, 1908, s. 57; 1 Statutes 277.

(k) 26 Statutes 330.

(d) *Ibid.*, 911.

(f) 26 Statutes 459.

(h) 8 Statutes 660.

parish, and a county borough council before they make an order under the same section for an alteration of the boundaries of a parish, must cause a local inquiry to be held.

By sect. 168 of the L.G.A., 1933 (*l*), a county council must hold an inquiry by means of one or more of their members, or of an officer, where a parish council desire to acquire land for any purpose and are unable to do so by agreement, and the county council are satisfied that the circumstances justify them in proceeding with the matter. After the inquiry has been completed and all objections made by persons interested have been considered, the county council may make and submit to the M. of H. an order for the compulsory purchase of the land. By sect. 168 (*g*), the same powers are conferred upon the person or persons holding the inquiry as are conferred upon persons appointed by the Minister of Health to hold an inquiry under that Act, that is to say sect. 290 is applied. [497]

In some circumstances, a county council may declare an R.D.C. to be in default. For example, a parish council may complain under sect. 16 of L.G.A., 1894 (*m*), to the county council that the R.D.C. are not adequately carrying out within the parish their duties relating to the provision or maintenance of sewers or water supply, or the enforcement of the P.H.As. Thereupon the county council may hold a local inquiry, and, if satisfied that the complaint is justified, may resolve that the duties and powers of the district council in the parish shall be transferred to themselves.

A similar power is vested in county councils as regards housing by sect. 35 of the Housing Act, 1930 (*n*). This provides that where complaint is made by a parish council or meeting, by a justice or by four local government electors that the R.D.C. have not exercised their powers under the Housing Acts, 1925 and 1930, when they ought to have been exercised, the county council may hold an inquiry into the matter and make an order declaring the R.D.C. to be in default. Sect. 290 of the Act of 1933 does not apply to such a local inquiry, and indeed no specific provision has been made to govern the powers of the person or persons holding the inquiry and other consequential matters, other than sect. 291 of the Act (*o*), as to the costs of inquiries. [498]

Where Inquiry may be Held.—A local inquiry is usually held in some building situate within the area of the local authority concerned with its subject-matter. In certain cases, however, more than one borough or district may be concerned with the matter, as, for instance, a town-planning scheme framed by a body administering a joint area, or a proposal for the establishment by a local authority of sewage disposal works outside their own area. In the former case there is no fixed rule, but the general practice is to hold such inquiries as may be necessary in some building situate in the area of the local authority on which will rest the principal responsibility for the administration of the scheme. In the latter case, the inquiry would usually be held in the district in which the sewage works would be situate.

The place appointed for the inquiry is generally the town hall or offices of the local authority; but in a district where such buildings are inadequate, then some public hall situate within the district, or some other convenient room well known to the inhabitants. [499]

(*l*) 26 Statutes 398.

(*m*) 10 Statutes 788.

(*n*) 23 Statutes 423.

(*o*) 26 Statutes 460. S. 291 is summarised *post*, p. 273.

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Powers of Person Holding Inquiry.—A person who has been appointed to hold a local inquiry to which sect. 290 of L.G.A., 1933 (*p*), applies, is given extensive powers by that section for the purpose of obtaining evidence on which to base his report. He may by summons require any person to attend at such time and place as is set out in the summons to give evidence or to produce any documents which may be in his custody or under his control which relate to any matter in question at the inquiry (sub-sect. (2)). He may also take evidence on oath, and for this purpose may administer an oath or may, instead of administering an oath, require a person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined (*ibid*). Although evidence on oath is rarely taken at local inquiries, it is obviously desirable to swear the witnesses where it is known that conflicting evidence will be submitted to the inspector on any question of importance. A decision that witnesses are to be sworn should usually be arrived at before the proceedings open, after consultation with the advocates appearing. It is obviously desirable that in either event the witnesses should be all unsworn or all sworn.

Any person who refuses or wilfully neglects to attend in obedience to such a summons, or to give evidence, and any person who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or other document which he is required to produce for the purposes of the inquiry is liable, on summary conviction, to a fine not exceeding £50, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment (sect. 290 (3)).

There are two minor restrictions placed upon the powers of the person holding the inquiry. These are that: (1) no person can be required to go more than ten miles from his place of residence in obedience to the summons unless the necessary expenses of his attendance are paid or tendered to him; and (2) no title or instrument relating to the title of land not being the property of a local authority can be required to be produced (*q*). [500]

One restriction is, however, placed upon the person or persons holding a local inquiry directed by a county council as to the acquisition of land by a parish council (*r*). Sect. 168 (5) of the Act of 1933 (*s*) provides that, unless the Minister of Health so directs, the person holding the inquiry must not hear counsel or expert witnesses. A similar provision appears in para. (5) of the First Schedule to the Small Holdings and Allotments Act, 1908 (*t*), as to inquiries directed by the M. of A. & F. as to the compulsory acquisition of land under that Act. Decisions of the Bar Council as to the appearance of counsel at local inquiries are set out on p. 182 of Vol. IV.

The Committee on Ministers' Powers have in their report (*u*) given a summary of the functions of a person appointed to hold a public local inquiry:

"He must examine the evidence and the information offered, and he must do so critically and dispassionately; he must listen to representations and weigh objections; he may have to hear counsel; he must duly and faithfully report; and he may submit recommendations and tender advice; but when he has done all this, his task is done and the final decision has to be taken by the responsible Minister himself."

This latter point is also stressed by HAMILTON, L.J. (later Lord SUMNER), when the *Arlidge Case* was before the Court of Appeal:

"No one contends that it is part of the inspector's duty to decide anything. In this, as in other Government departments, an inspector, whether regularly or

(*p*) 26 Statutes 459.
(*s*) 26 Statutes 809.

(*q*) Provisos to s. 290 (2).
(*t*) 1 Statutes 280.

(*r*) See *ante*, p. 266.
(*u*) 1932, Cmd. 4060.

specially employed, merely inquire and reports. His conclusions of fact, if he thinks fit to submit any, bind no one; they are simply stated for the information of the superior officials of the department." (a). [501]

The position of a Government department in relation to the holding of inquiries is defined by Lord LOREBURN in the case of the *Board of Education v. Rice* in the following words (a).

"In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend on matters of law alone. In such cases the Board will have to ascertain the law and also to ascertain the facts. I need not add that in doing so they must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such questions as though it were a trial. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

Whilst it is not the practice to follow strictly at inquiries the rules of the law of evidence, the person presiding must use his judgment as to the extent to which he will allow departures from these rules. Hearsay evidence should no doubt be excluded, as likely to be unreliable. On appeals as to the grant or refusal of a road service licence, it is the practice not to hear witnesses and to restrict the evidence to that tendered to the Traffic Commissioners, against whose decision the appeal is made.

The inspector may sit with assessors (b).

It is suggested that an advocate should be left to conduct his case with as little interruption as possible from the person presiding. If the inspector wishes to question a witness on any particular point, this should usually be reserved till the conclusion of the examination-in-chief or cross-examination. On the other hand, if the parties are not legally represented, the person presiding often has to address supplemental questions to the witnesses with the object of verifying the facts. [502]

Procedure.—Public notices are usually posted in the locality showing the date, time and place of hearing, and the nature of the matter to be considered before a public local inquiry is held. In some instances this step is not legally necessary, but must necessarily be taken in order that all persons interested may be given an opportunity of attending.

A number of statutes make express provision for the publication of notices; in others the publication is to be prescribed by regulations of the appropriate Minister. The regulations made under the Shops Act, 1912 (c), provide for three weeks' notice of the time of holding an inquiry and of the place at which it is to be held. When an alteration of areas is proposed by a county council, the Local Government (Alteration of Areas) (Notices) Regulations, 1934 (d), of the M. of H., require public notice of the proposal to be considered at the inquiry directed by the county council, and of the date, time and place of the inquiry, to be given ten days before its date, by advertisement in local newspapers and by affixing printed copies of a notice containing the above particulars to the offices of the local authorities concerned, and by posting printed copies in conspicuous places. A copy of the notice

(a) [1914] 1 K. B. 160, at p. 198.

(a) [1911] A. C. 170, at p. 182; 42 Digest 614, 141.

(b) In re Manchester (Ringway Airport) Order (1935), 90 J. P. 319; Digest Supp.

(c) 8 Statutes 613.

(d) S.R. & O., 1934, No. 567.

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After all necessary formal steps have been taken, the inquiry is held, and all persons or bodies interested who desire to submit representations are heard by the person presiding at the inquiry, without strict regard as to the *locus* of ratepayers and other individuals. An opposing local authority are, however, treated more strictly.

After all parties have been heard, and evidence taken, the person appointed to hold the inquiry may find it necessary to make an inspection of the subject-matter of the inquiry. For instance, where the inquiry is being held under the Housing Acts, the inspector will himself inspect the houses which are alleged to be unfit for human habitation or a danger to health, or on an inquiry by an inspector of the M. of H. into an alteration of boundaries, the inspector usually visits the locality, after giving notice that he will do so. In other cases the geographical details are examined at the inquiry by means of plans, maps and diagrams. [504]

Upon completion of the local inquiry, the person appointed to hold it will make his report to the Government department or the body by whom he is appointed. In the exceptional case of a commissioner appointed by the Secretary of State to prepare a scheme for the division of a borough into wards under sect. 25 of L.G.A., 1933 (i), the commissioner prepares a scheme based upon the conclusions reached by him at the inquiry, and nothing is said as to a report to the Home Secretary; but no doubt the commissioner submits a report with the scheme.

The Minister of Health holds that reports made by his inspectors in relation to specific applications or appeals are intended solely for his own information, and consequently declines to furnish copies either to local authorities or to private persons. If legal proceedings are pending the Ministry do not refuse to nominate one of their officers, who can be served with a *subpoena duces tecum* for the production of official papers in court; but the officer is usually instructed by the Ministry to claim that a report is privileged, and that it would be injurious to the public service to put it in evidence. Such an objection is usually upheld by the court, though at times it has only been upheld under strong protest (j).

In certain instances, however, these reports are not treated as confidential. For instance, copies of any report made after an inquiry on an application for a provisional order under the Gas and Water Works Facilities Act, 1870 (k), must by sect. 18 (5) of the amending Act of

(e) S.R. & O., 1934, No. 973.

(f) 8 Statutes 486.

(g) 9 Statutes 273.

(h) 20 Statutes 30.

(i) 26 Statutes 317.

(j) *A.-G. v. Nottingham Corpn.*, [1904] 1 Ch. 673 (88 Digest 150, 7), and *Denby v. M. of H.* (1935), noted at 99 J. P. (No.) 840.

(k) 8 Statutes 1254.

1873 (l) be delivered on request to the parties to the inquiry by the commissioner appointed to hold it.

As to the practice of the Minister of Transport on inquiries as to the grant or refusal of road service licences, see *ante*, pp. 268, 269. [505]

Presentation of Case by Parties.—The procedure in this matter by counsel on each side to a great extent follows that observed in a court of law. The rules of procedure are not so strict, since the function of an inspector is not so strictly limited as is that of a judge, and the rules of evidence will not be so strictly observed as in a court of law (m). In the main, however, the procedure in the presentation of a case will follow that observed in an action at law after the pleadings are ended and the case comes before the court.

The counsel or solicitor appearing for the local authority opens the proceedings by reading the notice of inquiry (which has been previously published), and after that, by asking if any objection is taken to the notice. If there is no such objection, the names of persons or bodies opposing the action of the local authority or wishing to take part in the inquiry are taken, and after that, the same representative will open the case for the council. Either the town clerk or clerk of the authority, or their solicitor, or counsel instructed by him, conducts the case for the local authority. The case for the council will then be fully stated, and will be followed by witnesses in support. These witnesses are usually officers of the council, *e.g.* the M.O.H. and sanitary inspector in the case of a clearance scheme under the Housing Act, 1930. After examination-in-chief they will be open to cross-examination by the opposing parties or their representatives. [506]

The case against the local authority's proposal will then be stated, either by individuals in person or through legal or other representatives. Witnesses for the opposition are examined and cross-examined after the statement of the party who has called them has been made, or in certain types of inquiry the witnesses are called before the statement.

The council's representative is then permitted to reply to the points raised by the opposition, and if necessary may re-examine his own witnesses who may also be cross-examined. Unless the inquiry is a very intricate one the reply of the council's representative will deal with all points which he wishes to make; but if the case is very intricate, a reply is sometimes made to each opposing party at the conclusion of their case.

The inquiry is then closed, and, unless the matter is purely administrative, the inspector or the Government department concerned may not hear any further evidence from any party unless an opportunity is given to other parties interested to hear and criticise that evidence. Otherwise any order made after the inquiry will be set aside as invalid (n).

It will, of course, be appreciated that since there is nothing equivalent to legal precedent in this matter, no fixed rules for procedure can be laid down, but the foregoing is fairly typical of present practice. It is apprehended that a court of law would not set aside an order of a Minister upon the ground of an alleged irregularity in the conduct of a local inquiry if the latter merely deviated in some way from the procedure in a court of law (o). [507]

Persons who may Appear or be Represented.—On the question of who

(l) 8 Statutes 1276.

(m) See *ante*, p. 269.

(n) *Errington v. Minister of Health*, [1935] 1 K. B. 249 (C. A.); Digest (Supp.).

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(e) S.R. & O., 1934, No. 972.

(f) 3 Statutes 430.

(g) 9 Statutes 273.

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(o) See the judgment of Lord SUMNER in the *Arldge Case*, *post*, p. 272.

is entitled to appear or to be represented at a local inquiry, sect. 290 of the L.G.A., 1933 (*p*), is silent, but the notice of a local inquiry usually contains an intimation that all persons interested will be heard. It has been indicated *ante*, on p. 268, that at certain inquiries as to the acquisition of land counsel or expert witnesses may not be heard unless the Minister otherwise directs.

The object of a local inquiry being to elucidate the facts bearing upon the subject-matter of the inquiry, all persons who are interested in or who possess particular knowledge of the matter in dispute should be heard. It may, further, assist in the attainment of this object, if persons interested are allowed to be represented by other persons skilled and instructed in the subject-matter of the inquiry. Counsel, solicitors, and expert witnesses will, therefore, in most cases be permitted to appear, unless expressly excluded by statute or by regulation. The definite question as to whether or not legal representation is to be allowed to parties is, however, in the discretion of the person holding the inquiry, or of the person or body appointing him (*q*).

A local inquiry is rarely held *in camera*.

See also the title HEALTH, MINISTRY OF, at p. 320 of Vol. VI. as to the practice of the M. of H. [508]

Function of Body Directing an Inquiry.—As already indicated, a local inquiry does not finally determine the rights of the parties affected. These are determined at a later stage by the decision of the Government department or other body. After considering the report on the inquiry and any other relevant matter, they must decide the appropriate action to be taken, *e.g.* whether or not to confirm a clearance order or a planning scheme.

In reaching a decision, the department or body must follow the elementary principles of reason and of justice, but none the less the decision is not judicial, but administrative.

There are, however, certain cases where a Government department are empowered to give judicial decisions, *i.e.* where, after having heard all parties and determined all questions of fact, the department must apply legal principles to such facts, and have no other course than to determine the matter according to law, being left with no discretion. Such cases are not frequent, and in view of the opinion expressed on p. 93 of the report of the Committee on Ministers' Powers (*r*) are not likely to increase. [509]

The function of a body or person appointed to arrive at a decision on a particular matter is well summarised by Lord SHAW in his judgment in the *Arlidge Case* (*s*):

"When a central administrative board deals with an appeal from a local authority it must do its best to act justly and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these, certain ways and methods of judicial procedure may very likely be imitated; and lawyer-like methods may find especial favour from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation. And the assumption that the methods of natural justice are *ex necessitate* those of courts of justice is wholly unfounded."

And earlier his lordship said, regarding the supposed analogy of judicial practice and procedure to that of administrative practice:

"Judicial methods may, in many points of administration, be entirely unsuitable and produce delays, expense, and public and private injury. The department

(*p*) 26 Statutes 459.

(*q*) *R. v. Williamson* (1890), 55 J. P. 101; 3 Digest 320, 67.

(*r*) Cmd. 4060.

(*s*) [1915] A. C. 120 at p. 188.

must obey the statute. For instance, in the present case it must hold a public local inquiry and upon a point of law it must have a decision of the law courts. *Quoad ultra* it is, and, if administration is to be beneficial and effective, it must be the master of its own procedure. For it must always be borne in mind that its procedure, if not in defiance of elementary standards—say, by hearing one side and refusing to hear the other—is simply the plan which it adopts to satisfy itself that the decision come to by a local authority was a good or a bad decision.”

Other members of the House of Lords expressed the view that each department must follow the procedure which it has found to be most convenient and which most completely gives justice to all parties. [510]

Costs.—The general subject of costs has been dealt with already (f), and only its special aspect as regards local inquiries is considered here. In the case of local inquiries to which sect. 290 of the L.G.A., 1933, applies (u), and in which the department authorised to hold the inquiry incur expense, such expenses must be paid by such local authority or party to the inquiry as the department may direct. The department may certify the amount of costs so incurred by them, and any amount so certified and directed by them to be paid by the authority or person is recoverable either as a debt to the Crown or by the department summarily as a civil debt (sect. 290 (4)). The costs so incurred may include any reasonable sum not exceeding five guineas a day for the services of any officer engaged in the inquiry.

Any Government department holding an inquiry to which sect. 290 applies has the further power under sub-sect. (5) of making orders as to the costs of the parties at the inquiry, and as to the parties by whom such costs are to be paid, and every such order may be made a rule of the High Court and enforceable as such on the application of any party named in the order. This, however, is rarely exercised, and in general all parties at an inquiry bear their own costs, though the power otherwise to order is salutary in preventing irresponsible schemes from being formulated by local authorities. [511]

With regard to inquiries to which the above provisions do not apply, if the enactment authorising the inquiry authorises the department concerned to recover their costs, these will include any reasonable sum not exceeding five guineas a day in respect of the services of any officer of the department engaged in the inquiry (a). But if no provision for the recovery of the department's costs is made, this charge could not be exacted, and the power to recover out-of-pocket expenses such as the inspector's travelling expenses, is not clear.

Where a county council hold a local inquiry under the Act of 1933 on the application of a borough, district or parish council, or of local government electors authorised to make such application, the expenses incurred by the county council in relation to the inquiry (including the expenses of any committee or person authorised by the county council to hold the local inquiry) must be paid by the council of the borough, district or parish unless the county council otherwise order (b). Sect. 291 (2) provides that any other expenses incurred by the county council in connection with inquiries held by them under that Act, not being expenses to which sect. 291 (1) applies, are to be paid by the county council.

(f) Vol. IV., title Costs, p. 114.

(u) 26 Statutes 459, and see “Powers of Government Departments” ante, at p. 265.

(a) Fees (Increase) Act, 1923, s. 9; 10 Statutes 875.

(b) L.G.A., 1933, s. 291 (1); 26 Statutes 460.

L.G.L., VII.—18

In the case of the *Middlesex County Council v. Kingsbury U.D.C.* (c), it was held that the similar provision in sect. 72 (4) of L.G.A., 1894 (d), did not cover the recovery by the county council of the remuneration of the person by whom the inquiry was held, but his out-of-pocket expenses only; the remuneration fell, therefore, on the county fund. [512]

London.—Sect. 12 of the L.C.C. (General Powers) Act, 1893 (e), empowers the council to expend up to £1,000 a year in investigating subjects of general importance to the inhabitants of the county as such.

Sect. 290 of the L.G.A., 1933 (f), does not extend to London, but sect. 129 of and the First Schedule to the P.H. (London) Act, 1891 (g), applies to London sects. 293 to 296 of the P.H.A., 1875 (h), as to inquiries which the M. of H. may make in pursuance of and for the purposes of the Act of 1891. Local inquiries under the Housing Act, 1925, are dealt with in sect. 116 of that Act (i), and the partial repeal of that section by L.G.A., 1933, does not extend to London.

Sect. 41 of the Thames Conservancy Act, 1932 (k), empowers the Conservancy to hold inquiries as to complaints in regard to their bye-laws, etc. [513]

(c) [1909] 1 K. B. 554; 33 Digest 25, 111.

(e) 11 Statutes 1114.

(g) 11 Statutes 1094, 1101.

(i) *Ibid.*, 1064.

(d) 10 Statutes 820.

(f) 26 Statutes 459.

(h) 13 Statutes 748, 749.

(k) 22 & 23 Geo. 5, c. xxxvii.

INSANITARY HOUSES

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See also titles :

BACK-TO-BACK HOUSES ;
CELLAR DWELLINGS ;
CHARGING ORDERS ;

DISINFECTION ;
RECONDITIONING OF HOUSES ;
SLUM CLEARANCE.

Introduction.—The enactments relating to individual insanitary houses fall into two main classes. First, there are provisions that are designed to remedy existing insanitary conditions by imposing upon local authorities the duty of requiring the repair or of ordering the demolition of an insanitary house, and of carrying out inspections for the purpose of ascertaining the condition of houses in their areas. Secondly, there are provisions designed to prevent insanitary conditions

arising. These give certain powers to the local authority and certain powers to the court, and introduce into tenancy agreements affecting certain houses implied conditions with regard to their repair. [514]

Local Authority's Duty to Require Repair of Insanitary Houses.—

The local authorities upon whom this duty is imposed are the councils of county boroughs or county districts (a). By sect. 17 of the Housing Act, 1930 (b), the duty arises in relation to any dwelling-house which is occupied or is of a type suitable for occupation by persons of the working classes (c); and for this purpose the question as to whether the house is occupied or not would seem to be immaterial (d). Where a local authority are satisfied that a house of this type is in any respect unfit for human habitation, then unless they are also satisfied that it is not capable at a reasonable expense of being rendered so fit, they must serve a notice requiring the execution of such works as will remedy its insanitary condition (e). The authority must decide whether they are satisfied that the house is unfit by considering an official representation (f), or a report from any of their officers or other information in their possession. The authority must serve a notice unless they are affirmatively satisfied that the house in question is not capable at a reasonable expense of being made fit. They need not be affirmatively satisfied that it is so capable.

In determining whether a house is fit for human habitation regard must be had to the extent to which by reason of disrepair or sanitary defects the house falls short of the provisions of any bye-laws in operation in the district or of any enactment in any local Act in operation in the district dealing with the construction and drainage of new buildings and the laying out and construction of new streets, or of the general standard of housing accommodation for the working classes in the district (g). "Sanitary defects" includes lack of air space or of ventilation, darkness, dampness, absence of adequate and readily accessible water supply or sanitary accommodation or of other conveniences, and inadequate paving or drainage of courts, yards or passages (h). In deciding whether a house can be rendered fit for human habitation at a reasonable expense regard must be had to the estimated cost of the necessary work and the value which it is estimated the house will have when the works are completed (i). [515]

(a) Housing Act, 1930, s. 24; 23 Statutes 416.

(b) 23 Statutes 406.

(c) The Housing Acts contain no definition of the expression, "the working classes," except in para. (12) of Sched. V. to Housing Act, 1925 (13 Statutes 1077), which is a definition for the purposes of that schedule only. For the meaning of the expression reference may be made to *White v. St. Marylebone Borough Council*, [1915] 3 K. B. 249 (38 Digest 216, 607); *L.C.C. v. Davis* (1897), 62 J. P. 68 (20 Digest 510, 2149); and *Crow v. Davis* (1903), 67 J. P. 319 (34 Digest 588, 585).

(d) See *Robertson v. King*, [1901] 2 K. B. 265; 38 Digest 212, 467.

(e) As to the action which must be taken if the authority are satisfied that the house is not capable of being rendered fit at a reasonable expense, see *post*, p. 278.

(f) An "official representation" is a representation by the M.O.H., and includes, in the case of the council of an urban or rural district (not being a borough or containing a population of more than 10,000) a representation made by the county M.O.H. to the county council, and forwarded by them to the council of the district; Housing Act, 1930, s. 51 (1); 23 Statutes 431.

(g) The Housing Act, 1930, s. 62 (3); 23 Statutes 436, as amended by Part II. of Sched. VI. to Housing Act, 1935. Back-to-back houses are deemed to be unfit for human habitation; see title BACK-TO-BACK HOUSES. So also are cellar dwellings; see title CELLAR DWELLINGS, and "Underground Rooms," *post*, p. 283.

(h) Housing Act, 1930, s. 62 (1); 23 Statutes 435.

(i) *Ibid.*, s. 17 (4); *ibid.* 410.

The notice requiring the execution of works must be in the prescribed form (j) and signed by the town clerk (k), and must be served (l) upon the person having control of the house, that is, upon the person who receives the rack rent of the house whether on his own account or as agent or trustee for some other person, or who would so receive it if the house were let at a rack rent (m). A rack rent means a rent which is not less than two-thirds of the full net annual value of the house (m). The notice must be served upon the person having control of the dwelling-house. In addition, the authority may serve a copy of the notice on any other person having an interest in the house whether as freeholder, mortgagee, lessee or otherwise (n). The service of such a copy would appear to have no effect except for the purpose of conveying information to the person having an interest in the premises. Moreover, an owner of a house who is not in receipt of the rents and profits may give notice to the authority of his interest in the house; and, if he does so, the local authority are obliged to give him notice of any proceedings taken by them (o). It is thought that "proceedings" within the meaning of this enactment include the service of a notice by the authority for the execution of works. The notice must require the person having control of the house within such reasonable time, not being less than twenty-one days, as may be specified in it, to execute the works specified in the notice, and must state that in the opinion of the authority the work so specified will render the house fit for human habitation (p).

An appeal to the county court within whose jurisdiction the house is situated lies under sect. 22 of the Act of 1930 (q) against a notice requiring the execution of works. If an appeal is brought, and the notice is confirmed either with or without modification, the person having control of the house must execute the works specified in the notice, or in the notice as modified by the court, within twenty-one days from the final determination of the appeal, or within such longer period as the court may fix (sect. 18 (1)). If there is no appeal, the

(j) For which see the Housing Acts (Forms of Orders and Notices) Regulations (Provisional), 1935. The works must be specified with precision, otherwise the notice will be bad; see *Cohen v. West Ham Corpn.*, [1933] Ch. 814, at p. 828; Digest (Supp.).

(k) Housing Act, 1925, s. 120 (2) (13 Statutes 1065), made applicable to the Act of 1930 by *ibid.*, s. 65 (1) (23 Statutes 486); this requirement is compulsory, and a notice signed by any other official is bad (*West Ham Corpn. v. Charles Benabo & Sons*, [1934] 2 K. B. 253; Digest Supp.).

(l) See the provisions as to the service of notices contained in s. 121 of the Housing Act, 1925 (13 Statutes 1066), as amended by sect. 79 of Housing Act, 1935. This notice is to be served on the person receiving the rack rent, and not on the "owner" or "occupier," and it is doubtful whether service can be properly effected by delivering it to some person on the premises, or by affixing it to some conspicuous part of the premises as provided for in s. 79 of the Act of 1935.

(m) Housing Act, 1930, s. 17 (2); 23 Statutes 410.

(n) *Ibid.*, s. 17 (3).

(o) Housing Act, 1925, s. 29 (1); 13 Statutes 1019.

(p) Housing Act, 1930, s. 17 (1). An owner who has executed works may obtain a charging order; see title CHARGING ORDERS. If one owner of a house has been served with a notice to execute works and he shows no disposition to comply with the terms of the notice, any other owner of the house may, under s. 29 (2) of the Act of 1925, as amended by Sched. V, to the Act of 1930, apply to a court of summary jurisdiction for an order empowering him to enter the house, and within the time fixed by the order execute the works specified in the notice. The court has jurisdiction to make an order of this kind if it appears that the interest of the applicant will be prejudiced by the default of the owner upon whom the notice has been served. Notice of the application must be given to the local authority.

(q) 23 Statutes 418.

works should be executed within the time specified in the notice. If the person having control of the house fails to execute the works within the required time, the authority may themselves execute the works, and may recover any expenses so incurred. There must be a failure to execute the specified works before the authority can enter. An owner who contends that he has in fact executed the works may, it seems, litigate the question at once. He need not wait until a demand is made for the recovery of expenses and then appeal against the demand (*r*).

An authority who wish to recover expenses which they have incurred in the execution of works, should serve (*s*) upon the person having control of the house a demand for the payment thereof. Service of such a demand is a condition precedent to the recovery of the expenses (*l*). A demand may be the subject of an appeal (*u*); and, if an appeal is brought and the demand is confirmed, it becomes operative as from the date of the final determination of the appeal. Expenses which have been the subject of a demand may be recovered by the authority either by action or summarily as a civil debt (*a*). In summary proceedings the time within which the proceedings may be taken is to be reckoned from the date of the service of the demand or, if an appeal is brought, from the date upon which the demand becomes operative (*l*). [516]

The expenses may be recovered under sect. 18 (3) of the Act of 1930 from the person having control of the house or, if he receives the rent as agent or trustee for some other person, then either from him or from that other person, or in part from him and as to the remainder from that other person. If the person having control is receiving the rent merely as agent or trustee for another, he may prove that he has not, and since the service on him of the demand has not had, in his hands on behalf of that other, sufficient money to discharge the whole of the authority's demand, and his liability is then limited to the total amount of the money which he has, or since the demand has had, in his hands on behalf of his principal or beneficiary (*c*).

In addition to the expenses they have incurred the authority may recover interest (*d*) on them as from the date when the demand for the expenses was served. The amount of the expenses and interest is a charge on the premises (*e*), and the authority have for the purpose of enforcing the charge all the statutory powers and remedies given to mortgagees by deed under the Law of Property Act, 1925 (*f*). This charge, which should be registered as a local land charge under sect. 15

(*r*) See *Cohen v. West Ham Corpn.*, [1933] Ch. 814; Digest (Supp.).

(*s*) As to method of service, see note (*l*) on p. 276.

(*t*) There is no express provision to this effect, nor has any form of demand been prescribed. It is, however, clear that the Act contemplates a demand of some kind, for a right of appeal against it is given. Moreover, the Act speaks of the date of the service of the demand in s. 18 (3), (4); 23 Statutes 411. Where more than one house is included, the demand must specify the sums spent on each separate house (*West Ham Corpn. v. Benabo & Sons*, [1934] 2 K. B. 253; Digest Supp.).

(*u*) Housing Act, 1930, s. 22; 23 Statutes 413. This right of appeal is dealt with *post*, pp. 284—286.

(*a*) *Ibid.*, s. 18 (3); 23 Statutes 411.

(*b*) *Ibid.*, s. 18 (4).

(*c*) *Ibid.*, s. 18 (3); 23 Statutes 411. It is thought that the liability of an agent or trustee extends to all money in his hands on behalf of his principal as beneficiary, and not merely to that which he has, or has had, in respect of the house in question.

(*d*) The rate is such as the M. of H. may with the approval of the Treasury from time to time by order fix. The present rate is 4 per cent. under the Housing (Rate of Interest) Amendment Order, 1934 (S.R. & O., 1934, No. 558).

(*e*) Housing Act, 1930, s. 18 (6); 23 Statutes 411.

(*f*) 15 Statutes 177.

of the Land Charges Act, 1925 (g), is a charge upon the entirety of the various interests in the premises, and ranks in priority to a rentcharge created by grant or reservation (h). [517]

The local authority may make an order declaring that any expenses recoverable by them shall be payable by weekly or other instalments within a period not exceeding thirty years from the service of the demand. Interest may be added at such rate as the Minister may, with the approval of the Treasury, from time to time by order fix (i). The fact that the authority have taken steps to recover the whole sum does not preclude them from making an order for payment by instalments. Where such an order has been made the amount of any instalment and interest may be recovered summarily as a civil debt from any owner or occupier of the house; and, if recovered from an occupier, may be deducted by him from the rent of the house (j). The charge upon the premises may also be enforced in respect of unpaid instalments (k). Whereas the total amount of expenses is recoverable from the person in control of the house, instalments due under an order are recoverable from the owner or occupier (l). For this purpose, an owner means a person other than a mortgagee not in possession, who is for the time being (that is, at the time when the instalment falls due) entitled to dispose of the fee simple of the house whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits of the house under a lease, the unexpired term whereof exceeds three years (m). It is thought that the provision which enables an occupier to deduct the amount of an instalment paid by him from his rent would not apply where the occupier is as between himself and the landlord to whom the rent is due, liable by virtue of the tenancy agreement between them to carry out the works which have given rise to the original claim for expenses (n).

It is expressly provided that service of a notice requiring the execution of works shall not prejudice or affect any other powers of the local authority, or any remedy available to the tenant of a dwelling-house against his landlord, either at common law or otherwise (o). An authority may serve a notice requiring the execution of works in respect of a part of a building which is occupied by persons of the working classes, or is of a type suitable for occupation by them (p). [518]

Duty to Demolish Insanitary Houses.—This duty, which also falls upon each borough and district council, arises in relation to any dwelling-house which is occupied or is of a type suitable for occupation by

(g) 15 Statutes 538.

(h) *Paddington Borough Council v. Finucane*, [1928] Ch. 567; Digest (Supp.); *Bristol Corpn. v. Virgin*, [1928] 2 K. B. 622; Digest (Supp.).

(i) Housing Act, 1930, s. 18 (5); 23 Statutes 411. For the prescribed form of order, see the Housing Acts (Forms of Orders and Notices) Regulations (Provisional), 1935. As to the rate of interest, see note (d) on p. 277, *ante*.

(j) Housing Act, 1930, s. 18 (5); 23 Statutes 411.

(k) *Payne v. Cardiff R.D.C.*, [1932] 1 K. B. 241; Digest Supp.

(l) Cf. sub-ss. 18 (3), (5).

(m) Housing Act, 1930, s. 62 (1); 23 Statutes 435.

(n) Such a case could not often arise in practice owing to the implied undertaking which exists by virtue of s. 1 of the Housing Act, 1925; 13 Statutes 1002. The duty to serve a notice requiring the execution of works extends, however, to any dwelling-house occupied or suitable for occupation by the working classes, and is not confined to houses whose rentals bring them within that section; *Arldrie v. Tottenham Urban Council*, [1922] 2 K. B. 719; 88 Digest 214, *supra*.

(o) Housing Act, 1930, s. 18 (7); 23 Statutes 411.

(p) Provision substituted for s. 20 of Housing Act, 1930 (23 Statutes 413), by s. 84 of Housing Act, 1935; see, further, p. 252.

persons of the working classes (*g*). Where the authority are satisfied *prima facie* (*r*) that the unfit house cannot be made fit at a reasonable expense, they must adopt a procedure which is designed first to give to persons interested in the house an opportunity of executing the works necessary to make the house fit, or of undertaking that the house shall not be used for human habitation; and, secondly, to secure that, if no one is willing to undertake the works, and if no undertaking as to user is given, the house shall be demolished. Accordingly, the authority must under sect. 19 of the Act of 1930 (*s*) first serve a notice (*l*) upon the person having control of the house (*u*), upon any other person who is an owner thereof (*a*), and, as far as it is reasonably practicable to ascertain such persons, upon every mortgagee. This notice must give the time, not less than twenty-one days after its service, and the place at which the authority will consider the condition of the house and any offer which any person upon whom the notice is served may make with regard to the execution of works or the future user of the house. At the time and place so indicated the authority must be prepared to consider the matters mentioned above, and when so doing to hear any person upon whom the notice has been served (*b*).

A person upon whom such a notice is served must, if he intends to make any offer with respect to the carrying out of works, serve upon the authority within twenty-one days of the service of the authority's notice, notice in writing of his intention so to do (*c*). He must also within such reasonable period as the authority may allow submit a list of the works which he offers to carry out. On an appeal to the county court under sect. 22 of the Act of 1930 against a demolition order, the judge may quash the order and accept an undertaking to carry out works, but this jurisdiction cannot be exercised unless these requirements have been complied with (*c*). [519]

Any owner or mortgagee may offer to the authority an undertaking either that he will within a specified period carry out works so as to make the house fit for human habitation, or that the house shall not be used for human habitation until the authority cancel the undertaking; and the authority may, if they think fit, accept such an undertaking (*d*).

(*g*) See note (*c*), *ante*, p. 275; see also *post*, p. 282.

(*r*) See *Fletcher v. Ilkeston Corpn.* (1931), 96 J. P. 7; Digest (Supp.). They must also be so satisfied upon consideration of an official representation or other information in their possession; as to which, see note (*f*), p. 275, *ante*. This procedure should be contrasted with that described above which must be adopted when the authority are not satisfied on this point.

(*l*) 23 Statutes 412.

(*u*) For the prescribed form, see the Housing Acts (Form of Orders and Notices) Regulations (Provisional), 1935. As to service of the notice see Housing Act, 1925, s. 121; 13 Statutes 1006. As to service upon the person having control of the house, see *ante*, note (*l*), p. 276.

(*a*) As to which, see *ante*, p. 276.

(*e*) The expression "owner" in this connection has the same meaning as that given *ante*, p. 278.

(*b*) Housing Act, 1930, s. 19 (1) (23 Statutes 412). In carrying out this duty the authority must act judicially; see *Broadbent v. Rotherham Corpn.* (1917), 81 J. P. 103; 38 Digest 214, 484.

(*c*) See Housing Act, 1935, s. 83 (1), (2).

(*d*) Housing Act, 1930, s. 19 (2); 23 Statutes 412. From the language used it would seem that the authority cannot properly accept an undertaking as to the execution of works unless they are affirmatively of opinion that the execution of the works will make the house fit for human habitation. An owner who has given an undertaking as to user may recover possession of the house notwithstanding anything in the Rent and Mortgage Interest (Restrictions) Acts, 1920-1935; see Housing Act, 1930, s. 21 (3) (23 Statutes 413), as extended by s. 86 of Housing Act, 1935.

Only the undertaking of an owner or mortgagee can be accepted. An undertaking by a person who has control of the house, but who is not an owner or mortgagee, for example an agent who is receiving the rack rent for a principal, is not acceptable. There is no obligation upon the authority to accept an undertaking, and they may refuse even where the works suggested in the undertaking are such as would render the house fit for habitation. This discretion is, however, a judicial one; and the authority ought not to refuse an undertaking unless they have some good reason for their refusal. Unless an undertaking is accepted, a demolition order must be made against which an appeal lies to the county court (*e*).

If an undertaking as to user has been accepted, any person who, knowing of the undertaking, uses the premises in contravention of the undertaking, or permits them to be so used, is liable on summary conviction to a fine not exceeding £20, and to a further penalty of £5 for every day or part of a day on which he so uses them, or permits them so to be used, after conviction (*f*).

In the following cases the local authority must make a demolition order as to a house with regard to which a notice has been served by them (*g*): (i.) when no undertaking as to the execution of works or as to user has been offered by an owner or mortgagee; (ii.) when such an undertaking has been offered, but not accepted; (iii.) when an undertaking as to the execution of works has been accepted, and the works are not carried out within the time specified in the undertaking; and (iv.) when an undertaking as to user has been accepted, and the house is subsequently used in contravention of the undertaking. [520]

Whenever the duty to make a demolition order arises, the order should be made at once, and should be in the prescribed form (*h*). A copy of the order must be served upon the person having control of the house, upon any other person who is an owner thereof, and, so far as it is reasonably practicable to ascertain such persons, upon every mortgagee (*i*).

If the authority consider that a building to which a demolition order applies ought to be cleansed from vermin before it is demolished, they may serve a notice on the owner or owners that they intend to cleanse it (*k*). The notice may be served at any time after the order has been made and before it becomes operative. The authority, having served this notice, may after the order has become operative and the building has been vacated, enter it and carry out such work as they may think requisite for destroying or removing vermin. No owner may proceed with the demolition of the building until he receives a further notice from the authority authorising him to proceed. To prevent delay on the part of the authority it is provided that after the building has been vacated an owner may serve on the authority a notice requiring them to carry out the work of cleansing within fourteen days, and at the

(*e*) See *post*, p. 284.

(*f*) Housing Act, 1930, s. 21 (2) (23 Statutes 413), as in part repealed by Housing Act, 1935, Sched. VII., Part I.

(*g*) *Ibid.*, s. 19 (3); 23 Statutes 412.

(*h*) As to which, see the Housing Acts (Forms of Orders and Notices) Regulations (Provisional), 1935. A special form has been prescribed for cases (iii.) and (iv.) above. As to service of the notice, see Housing Act, 1925, s. 121; 13 Statutes 1066. As to service upon the person having control of the house, see note (*l*), *ante*, p. 276.

(*i*) Housing Act, 1930, s. 19 (3) (23 Statutes 412), as amended by s. 79 (2) of the Act of 1935.

(*k*) See Housing Act, 1935, s. 82.

expiration of that period he is at liberty to proceed with the demolition whether or not the work of destroying vermin has been completed (l). See also title DISINFECTION. [521]

A demolition order requires that the house shall be vacated within a period specified in it, not being less than twenty-eight days from the date on which it becomes operative (m). As soon as the order has become operative, the authority must serve on the occupier or occupiers of the house a notice, which should be in the prescribed form (n), stating the effect of the order and specifying the date by which the order requires the house to be vacated. The notice should further require the occupier to quit the premises either before the date specified in the order or before the expiration of twenty-eight days from the service of the notice, whichever is the later. At any time after the date on which the notice requires the house to be vacated, possession of it may be recovered summarily under the Small Tenements Recovery Act, 1838 (o); and this notwithstanding anything contained in the Increase of Rent and Mortgage Interest (Restrictions) Acts (p). Any person who, knowing that a demolition order has become operative with regard to a house, enters into occupation of it after the date upon which it ought to be vacated, or permits any other person to enter into such occupation after that date is liable to penalties (q). The local authority are not obliged to provide for the rehousing of persons displaced by a demolition order. They have, however, ample powers so to do, and if they decide to exercise their powers, the Government must make or undertake to make a grant towards their expenses (r).

[522] The demolition order also requires that the house shall be demolished within six weeks from the date upon which it is to be vacated according to the terms of the order or, if it is not then vacated, within six weeks from the date upon which it is in fact vacated, or, in either case, within such longer period as the authority think it reasonable to specify (s). The owner or owners of the house must demolish it within the time limited by the order; and on default by them the local authority must enter and carry out the demolition (t). The materials of the demolished house must be sold by the authority and the amount realised by the sale set-off against the expenses incurred in carrying out the demolition. If there is a deficiency after the set-off, the amount thereof may be recovered by the authority as a simple contract debt in the county court within whose jurisdiction the house is situated. Recovery may be made from the owner or owners of the house (u), and if there is more than one owner the proportions of their liability are decided by the county court judge. An owner who pays to the authority the full amount of the deficiency may recover similarly from any other owner such contribution as the judge may determine to be just and equitable. In fixing the quantum of the liability of the owners the judge will no

(l) See Housing Act, 1935, s. 82.

(m) As to when the order becomes operative, see Housing Act, 1930, s. 22 (5); 23 Statutes 414.

(n) *Ibid.*, s. 39 (1) (23 Statutes 425). For the prescribed form, see the Housing Acts (Forms of Orders and Notices) Regulations (Provisional), 1935.

(o) *Ibid.* For the Act of 1838, see 10 Statutes 324.

(p) Housing Act, 1930, s. 59; 23 Statutes 434.

(q) *Ibid.*, s. 39 (3); *ibid.*, 426.

(r) *Ibid.*, s. 26 (1), as amended by the Housing Act, 1935.

(s) *Ibid.*, s. 19 (3), as amended by the Housing Act, 1935.

(t) *Ibid.*, s. 21 (1); 23 Statutes 413.

(u) *Ibid.*, s. 2 (4) (23 Statutes 399), as applied by s. 21 (1).

doubt have regard to the nature of their respective interests in the property in question and to their contractual obligations with regard to repairs. If there is a surplus of the proceeds of the sale over the expenses of demolition, the authority must pay it to the owner of the house, or if there is more than one to the owners in such proportions as they may agree amongst themselves (*x*). If the owners are unable to agree, the authority may pay the surplus into the county court (*x*); and it may be paid out to the owners by order of the judge in such shares as he may determine to be just and equitable. It is expressly provided that in determining these shares the judge must have regard to the two considerations already mentioned above (*x*). [523]

Where a demolition order has become operative with regard to any house subject to a lease (*a*), either the lessor or the lessee may apply to the county court within whose jurisdiction the house is situated for an order determining the lease or varying it (*b*). Such an application is commenced by plaint and summons in the ordinary way. Where the lessee is the applicant he must join as plaintiff any person claiming title under him who consents in writing to be so joined, and as defendant any person so claiming who does not so consent. All persons must be made parties whose presence is necessary to enable the judge properly to adjudicate and settle all questions involved in the application (*c*). The judge may order that the lease shall be determined or varied either unconditionally or subject to such terms and conditions as he may think fit. In particular he may make it a condition of the order that one party to the proceedings shall pay to another a sum of money by way of compensation or damages. [524]

Closing Orders for Parts of Buildings.—A local authority may take the same proceedings as those outlined, *ante*, on pp. 275, 278, with regard to: (i.) Any part of a building which is occupied, or is of a type suitable for occupation by persons of the working classes (*d*); or (ii.) an underground room which is deemed to be unfit for human habitation (*e*); as they may take with regard to a dwelling-house; but with this exception, that instead of making a demolition order they must make a closing order (*f*) prohibiting the use of the part of the building, or (as the case may be) of the underground room for any purpose other than a purpose approved by the authority (*g*).

The approval of the authority to the use for any particular purpose of a part of a building or room in respect of which they have made an order must not be unreasonably withheld, and an appeal to the county council lies against a withholding of approval. The authority must determine an order on being satisfied that the part of a building or the

(*x*) Housing Act, 1930, s. 2 (4) (23 Statutes 399), as applied by s. 21 (1).

(*a*) This expression includes an underlease and any tenancy or agreement for a lease, and the expressions "lessor" and "lessee" and "sub-lessee" must be construed accordingly, and as including also a person deriving title under a lessor, lessee or sub-lessee; see s. 40 (4) of Act of 1930; 23 Statutes 426.

(*b*) Housing Act, 1930, s. 40 (23 Statutes 426), as amended by s. 87 of Act of 1935.

(*c*) See, further, as to the practice on these applications, County Court Rules, Or. L., r. 61 (4).

(*d*) See *ante*, p. 275, note (*c*).

(*e*) See *post*, p. 283.

(*f*) For the form of order, see the Housing Acts (Forms of Orders and Notices) Regulations (Provisional), 1935.

(*g*) Housing Act, 1930, s. 20 (23 Statutes 413), as amended by Housing Act, 1935, s. 84 (1).

room has been rendered fit for human habitation, and an appeal lies against a refusal to determine a closing order (*h*).

A person who, knowing that a closing order has become operative in respect of any premises, uses those premises in contravention of the order, or permits them to be so used is guilty of an offence for which he may be made liable, on summary conviction, to a fine not exceeding £20, and to a further penalty of £5 for every day or part of a day during which he so uses the premises, or permits them to be used, after conviction (*i*). Nothing in the Rent and Mortgage Interest (Restrictions) Acts prevents an owner from recovering possession of premises in respect of which a closing order is in force (*k*). [525]

Underground Rooms.—A room, the surface of the floor of which is more than three feet below the surface of the part of the street adjoining or nearest to the room, or more than three feet below the surface of any ground within nine feet of the room, is deemed to be unfit for human habitation unless either (*i*.) the room is on an average at least seven feet high from floor to ceiling; or (*ii*.) it complies with such regulations (*l*) as the authority may with the consent of the Minister prescribe for securing the proper ventilation of such rooms and their protection against dampness, effluvia or exhalation (*m*).

If the authority fail to make regulations after being required by the Minister so to do, the Minister may himself make them, and the regulations so made have effect as if they had been made by the authority with the Minister's consent. As to cellar dwellings, see that title, and sects. 71—75 of the P.H.A., 1875 (*n*). [526]

Submission by Owner of List of Improvements.—An owner of a house who proposes to carry out works of improvement (*o*) on a house which is occupied, or of a type suitable for occupation, by persons of the working classes may submit a list of the proposed works to the local authority (*p*) together with a request in writing that they shall inform him whether in their opinion the house would, after the execution of those works, with or without additional works, be in all respects fit for human habitation and would, with reasonable care and maintenance, remain so fit for a period of at least five years (*q*).

The authority must (*r*), on receipt of such a list and request, take the list into consideration; and, having done so, must inform the owner whether they are of opinion that (*i*.) the house would, after the execution of the works specified in the owner's list, be in all respects fit for human habitation; or (*ii*.) the house would, after the execution of such works, together with additional works specified in a further list furnished by the authority to the owner, be so fit; or (*iii*.) the house would not

(*h*) Housing Act, 1930, s. 20 (23 Statutes 413). As to appeal, see *post*, p. 284.

(*i*) *Ibid.*, s. 21 (2); 23 Statutes 413; as in part repealed by the Housing Act, 1935.

(*k*) *Ibid.*, s. 21 (8), as amended by s. 86 of the Act of 1935.

(*l*) A series of model regulations (No. XXII.) has been issued by the M. of H.

(*m*) Housing Act, 1925, s. 18 (13 Statutes 1013), as amended by Sched. V. to Act of 1930 and in part repealed by Housing Act, 1935; Sched. VII., Pt. 1.

(*n*) 13 Statutes 655, 656.

(*o*) This includes the provision of additional or improved fixtures or fittings; see the Housing Act, 1935, s. 55 (5).

(*p*) The authority is the borough or district council; see *ibid.*, s. 57 (1).

(*q*) *Ibid.*, s. 55 (1).

(*r*) *Ibid.*, s. 55 (2).

after the execution of such works, even together with any works that could be specified in such further list, be so fit (s).

In cases (i.) and (ii.) above, when the works specified in the owner's list, together with any specified in a list furnished by the authority have been executed to the satisfaction of the authority, the owner becomes entitled, on making application, and paying a fee of 1s., to a certificate (t) of the authority that the house is fit for human habitation and will with reasonable care and maintenance remain so fit for a period specified in the certificate (u). The period so specified must be not less than five nor more than ten years.

During the period specified in the certificate the authority cannot take any proceedings towards making a demolition order or a closing order (a) in respect of the house (b), but a notice requiring the execution of works may, it seems, be served during the currency of the certificate, assuming that the house has not received reasonable care and maintenance. [527]

Appeals against Notices and Orders relating to Insanitary Houses.—

By sect. 22 of the Housing Act, 1930 (c), an appeal lies against any of the following acts: (i.) a notice requiring the execution of works; (ii.) a demand for the recovery of expenses incurred by an authority in executing works specified in such a notice; (iii.) an order made by an authority that any such expenses shall be paid by instalments; (iv.) a demolition order; or (v.) a closing order, or a refusal to determine a closing order.

An appeal against withholding of approval in relation to the use for any purposes of premises in respect of which a closing order has been made, is also given by sect. 22 as extended by sect. 84 (8) of the Housing Act, 1935.

The appeal lies to the county court within whose jurisdiction are situated the premises to which the notice, demand, order or refusal relates. It must be brought within twenty-one days after the service of the document or the refusal. Any person who is "aggrieved" may appeal (d), except that no appeal against a demolition order or a closing order or refusal to determine a closing order lies at the suit of a person who is in occupation of the premises under a lease or agreement of which the unexpired term does not exceed three years (e).

On an appeal against a demand for the recovery of expenses incurred by an authority in executing works, or against an order made by the authority for the payment of any such expenses by instalments, no question may be raised which might have been raised on an appeal against the original notice requiring the execution of the works (f).

(s) It is submitted that this is the effect of s. 55 (2), the language of which is obscure.

(t) For the authentication of certificates; see Housing Act, 1935, s. 93.

(u) *Ibid.*, s. 55 (3).

(a) See *ante*, pp. 279, 280.

(b) Housing Act, 1935, s. 55 (4).

(c) 23 Statutes 413.

(d) The right to appeal is not confined to those persons who have, or ought to have, been served with the notice, demand or order under appeal. As to the meaning of the expression "a person aggrieved," see *Robinson v. Currey* (1881), 7 Q. B. D. 465; 32 Digest 530, 1844.

(e) Housing Act, 1930, s. 22 (1), proviso (ii.); 23 Statutes 414. The appeal given by the section is on questions of law and fact; see *Fletcher v. Ilkeston Corpn.* (1931), 96 J. P. 7; Digest (Supp.).

(f) *Ibid.*, 1930, s. 22 (1), proviso (i.); 23 Statutes 414. It is suggested that this does not apply when the person seeking to raise the question was not "aggrieved"

The following are some of the grounds upon which an appeal may be launched against the original notice : (i.) the person served is not the person in control of the premises ; (ii.) the house in question is not occupied or suitable for occupation by persons of the working classes ; (iii.) the house is in no respect unfit for human habitation ; (iv.) the repairs specified in the notice are more than are necessary to render it so fit ; (v.) the specified repairs will not render it so fit (g) ; or (vi.) the house is not capable of being rendered fit at a reasonable expense.

None of the above grounds is available to a person who is appealing against a demand for the recovery of expenses or an order that such expenses be paid by instalments. An appeal against a demand may, it is thought, proceed upon the following grounds : (i.) the original notice was complied with ; (ii.) the works in respect of which the demand is made are not the same as those specified in the original notice ; (iii.) the works in respect of which the demand is made were carried out in an extravagant fashion or at an excessive cost (h). [528]

An appeal against an order for the payment of expenses by instalments may be brought upon any of the above three grounds, or upon the ground that the instalments made payable by the order are too large.

An appeal against a demolition order may, it is thought, be based upon any of the first three of the grounds mentioned above in connection with a notice requiring the execution of works, or upon any of the following grounds : (i.) the house is capable of being rendered fit at a reasonable expense ; (ii.) the appellant offered to the authority an undertaking that ought to have been accepted ; (iii.) the undertaking accepted by the authority has not in fact been broken by the appellant.

An appeal against a closing order may be brought upon similar grounds to those mentioned as available in connection with a demolition order. In addition, the point may be taken (where the order is made in respect of a room) that the room is not an "underground room" within the definition. On an appeal against a refusal to determine a closing order the only point that can be taken would appear to be that the premises have been rendered fit for human habitation ; and, in the case of a withholding of approval, the only issue is as to the reasonableness of the withholding. [529]

On an appeal the county court judge may confirm, quash or vary the notice, demand or order as he thinks fit ; and on an appeal against a demolition order he may quash the order and accept from the appellant an undertaking as to the execution of works or the user of the premises such as might have been accepted in the first place by the authority themselves. Where the judge accepts such an undertaking, and it is not complied with or subsequently broken by the appellant, the

by the original notice, and so could not have appealed against it. Thus an occupier may have no *locus standi* to appeal against a notice, but he obviously has a right of appeal against an order for payment by instalments.

(g) It is submitted that an occupier who alleges that the works required by the notice are not adequate, might be held to be "a person aggrieved" by the notice so as to enable him to appeal against it.

(h) It should be noticed that none of these grounds will be available by way of defence to an action for recovery of the amount comprised in the demand ; for if no appeal is brought against a demand it is final and binding as to all matters which might have been raised by an appeal ; see *post*, p. 286. It is thought that the only matter which can be raised by way of defence to such an action is by a person having control of the house who is an agent or trustee. It seems that he can assert that he has not had in hand sufficient to satisfy the demand, and in doing so limits his liability ; see Housing Act, 1930, s. 18 (3) ; 23 Statutes 411.

authority must make a demolition order (*i*). Where the judge allows an appeal against a notice requiring the execution of works he must, if he is so requested by the authority, include in his judgment a finding as to whether the house can or cannot be rendered fit for human habitation at a reasonable expense (*k*). The authority should take care to obtain a finding on this point, for their power to purchase the house depends upon it (*l*). The procedure on an appeal is governed by the County Court Rules, Order L., r. 60 (*m*). Attention is drawn to the forms of notice of appeal and request for entry thereof contained in the appendix to the rules. The decision of the county court judge on any appeal is final upon all questions of fact, but an appeal from his decision upon a point of law lies to the Court of Appeal whose decision is final (*n*). [530]

It is frequently important to ascertain the exact date upon which a notice, demand or order becomes operative. For example, a demolition order must require that the house shall be vacated within a period from the date on which the order becomes operative. If no appeal is brought, the notice, demand or order becomes operative at the end of twenty-one days from the date of its service (*o*). If an appeal is brought, the notice, demand or order becomes operative, if and so far as it is confirmed by the county court judge or the Court of Appeal, as from the date of the final determination of the appeal, that is, the date upon which the court's decision is given, or when no appeal is taken to the Court of Appeal upon the expiration of the period within which such an appeal might have been brought (*o*). If an appeal is brought and is subsequently withdrawn, the withdrawal is deemed to be a final determination of the appeal (*o*). It would seem, therefore, that in this case the notice, demand or order becomes operative as from the date of the withdrawal even if the withdrawal takes place within twenty-one days from the date of service. [531]

Power to Acquire and Repair Insanitary Houses.—Where an appeal has been brought against a notice requiring the execution of works, and the county court judge allows the appeal he must, if he is requested by the authority so to do, make a finding as to whether the house can or cannot be rendered fit for human habitation at a reasonable expense (*p*). If he finds that the house cannot be rendered fit at a reasonable expense, the local authority have power to purchase the house by agreement or they may be authorised to buy it compulsorily (*q*). If they purchase the house compulsorily, they must forthwith execute all the works specified in the notice against which the appeal was brought. The object of this provision seems to be to make the original opinion of the local authority that the house is capable of being rendered

(i) Housing Act, 1930, s. 22 (2) (i.); 23 Statutes 414. No undertaking can be accepted by the judge unless the appellant has served on the authority a notice of his intention to make an offer; see *ante*, p. 279. There is nothing to prevent the judge accepting an undertaking that two back-to-back houses shall be converted into one through house; see *Johnson v. Leicester Corpn.*, [1934] 1 K. B. 638; Digest (Supp.).

(k) *Ibid.*, s. 22 (2) (ii.).

(l) See *infra*.

(m) Housing Act, 1930, s. 22 (3) (23 Statutes 414). These rules replace the temporary ones made under *ibid.*, s. 61; *ibid.*, 435.

(n) *Ibid.*, s. 22 (4); *ibid.*, 414.

(o) *Ibid.*, s. 22 (5); *ibid.*, 414.

(p) *Ibid.*, s. 22 (2) (ii.); *ibid.*, 414.

(q) *Ibid.*, s. 23 (1); *ibid.*, 415.

fit at a reasonable expense prevail over the decision of the county court judge to the contrary, if in such a case they purchase the house and execute the works themselves. It should be noticed that the obligation to execute works arises only where the authority have acquired the house compulsorily. The compulsory acquisition of the house is authorised by a compulsory purchase order made by them and submitted to the Minister of Health for his confirmation within six months of the determination of the appeal (r). If, before the order has been confirmed by the Minister, any owner (s) or mortgagee of the house undertakes to carry out to the Minister's satisfaction the works specified in the notice which was the subject-matter of the appeal, the Minister may not confirm the order unless the undertaking is subsequently broken (t). On a compulsory purchase, the measure of compensation is the value of the site of the house as a cleared site available for development in accordance with the requirements of the building bye-laws for the time being in force in the area, and of any planning scheme in operation in the area. Subject to this, the compensation is assessed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919 (u). [532]

Inspection by Local Authority.—It is the duty of a local authority to cause an inspection of their area to be made from time to time to ascertain whether any dwelling-house is unfit for human habitation (a). It seems that this duty extends to dwelling-houses of all kinds although the duties discussed above extend only to those occupied or suitable for occupation by persons of the working classes. If any justice of the peace acting for the district in which a particular house is situated, or any four or more local government electors of the district, or in a rural district the parish council of any parish within the district complain to the M.O.H. in writing that the house is unfit for human habitation, the M.O.H. must forthwith inspect the house and make a report to the local authority (b). In the report he should state the facts of the case and give his opinion as to whether or not the house is unfit for habitation. In connection with their duty to carry out inspections, the authority must comply with such regulations and keep such records as the M. of H. may from time to time prescribe (c). The regulations at present in force are contained in Part IV. of the Housing Consolidated Regulations, 1925 (d), as amended by the Housing Consolidated Regulations, 1932 (e). The regulations give the authority a wide discretion in determining the procedure to be adopted in carrying out inspections, and the records to be kept. They do, however, impose an obligation to prepare from time to time a list or lists of houses, the

(r) Housing Act, 1930, s. 23 (2); 23 Statutes 415. The compulsory purchase order is made and confirmed in accordance with the same provisions as apply to an order made with regard to a clearance area; as to which see title SLUM CLEARANCE and the Second Schedule to the Act (23 Statutes 438).

(s) As to who is an owner, see *ante*, p. 278.

(t) Housing Act, 1930, s. 23 (2); 23 Statutes 415.

(u) *Ibid.*, s. 23 (3); 23 Statutes 415. Cf. the compensation payable on the compulsory acquisition of land in a clearance area; as to which see title SLUM CLEARANCE.

(a) Housing Act, 1925, s. 8 (18 Statutes 1008), as amended by Sched. V. to Act of 1930 (23 Statutes 442).

(b) Housing Act, 1930, s. 51 (2); 23 Statutes 431.

(c) Housing Act, 1925, s. 8; 13 Statutes 1008.

(d) S.R. & O., 1925, No. 800.

(e) S.R. & O., 1932, No. 648.

early inspection of which is, in the opinion of the M.O.H., desirable. They also contain a direction that when an inspection takes place the condition of a house must be examined in relation to (*inter alia*) the following matters: the adequacy and accessibility of the water supply and arrangements for preventing its contamination; the adequacy and accessibility of sanitary conveniences; the drainage; the condition of the house in regard to light, free circulation of air, dampness and cleanliness; the paving, drainage and sanitary condition of courtyards, passages or outhouses; the arrangements for the deposit of refuse and ashes; and the existence of "underground rooms." [538]

Bye-Laws.—A local authority may make and enforce bye-laws (*f*) respecting houses which are intended or used for occupation by the working classes. Such bye-laws may fix the numbers of persons who may occupy the house (*g*), provide for the separation of the sexes therein (*g*), the registration and inspection of the house, its drainage, and the promotion of cleanliness and ventilation, and require the provision of closet, water supply and washing accommodation, and accommodation for the storage, preparation and cooking of food. The bye-laws may also deal with the repair and lighting of common staircases, the stability of the house, and prevention of and safety from fire, the cleansing and redecoration of the house, the paving of courts and courtyards, the provision of handrails for staircases, the adequate lighting of rooms, and the prevention of nuisances arising from or in a part of a building or an underground room in respect of which a closing order is in force. [534]

In addition to any other penalty, the bye-laws may prohibit the letting of the house for occupation by members of more than one family unless the terms of the bye-laws are complied with, but where a house is so let at the time when the bye-laws come into force, the bye-laws must allow a reasonable time for the execution of any works which may be necessary in order to make the house accord with their terms.

Model bye-laws have been issued by the Ministry (*h*).

The bye-laws may impose upon any owner (*i*) of the house, or upon any other person having an interest in it the duty of executing any works which may be necessary to make the house comply with their terms (*j*). The model bye-laws impose this duty sometimes upon the owner and sometimes upon the occupier. A person upon whom such a duty is laid has a right to enter the premises at all reasonable times for the purpose of discharging the duty, and if he makes default, the authority may serve upon him a notice in writing calling upon him to remedy the default (*k*). After the expiration of twenty-one days from service of the notice, the authority may themselves execute the works and recover the costs and expenses they have incurred in the same way as they may recover the expenses of carrying out works for the purpose of making an insanitary house fit for human habitation (*l*).

(*f*) Under Housing Act, 1925, s. 6 (13 Statutes 1006), as amended by Housing Act, 1935, s. 68. The authority must exercise the power if required by the Minister.

(*g*) As from the "appointed day" within the meaning of the Housing Act, 1935, any bye-laws made for these purposes cease to have effect.

(*h*) Series XIII., for the improvement of housing conditions; these may require modification in view of the 1935 Act.

(*i*) As to who is an owner, see *ante*, p. 278.

(*j*) Housing Act, 1925, s. 7 (1); 13 Statutes 1007.

(*k*) *Ibid.*, s. 7 (2) (3).

(*l*) *Ibid.*, s. 7 (3) (13 Statutes 1007), as amended by Sched. V. to Act of 1930 (28 Statutes 442). See also *ante*, p. 277.

Under sect. 68 (6) of the Housing Act, 1935, the Minister is the confirming authority for bye-laws made under the above power, and when an authority is required by the Minister to make bye-laws for any of the specified purposes, and they fail to do so within a time prescribed by the Minister, the Minister may himself make bye-laws for those purposes.

Some of the purposes for which bye-laws may be made under sect. 6 of the Act of 1925 were restricted to houses let in lodgings or occupied by more than one family, but these purposes are extended by sect. 68 (5) of the Act of 1935 to houses occupied by one family only.

Occasionally a person who is under obligation to do something for the purpose of complying with a bye-law cannot do it without contravening the provisions of some lease or tenancy agreement. The local authority may then make an application to the county court, which has jurisdiction, after giving parties interested an opportunity of being heard, to order that the provisions of the lease or agreement shall be relaxed in so far as they are inconsistent with the requirements of the bye-laws (*m*). Again, the bye-laws may impose the duty of executing certain works upon one person whereas the terms of a lease or tenancy agreement cast the burden upon another. The local authority may then apply to the county court which has jurisdiction (again after giving interested parties an opportunity of being heard) to make a charging order, in favour of the person who has carried out the works, charging on the premises an annuity to repay him the expenses he has incurred (*n*). This power arises only where it is proved to the satisfaction of the authority that the works have been properly carried out. A charge may be created in respect of part only of the expenses, and the annuity charged may be of such an amount and may extend over such a length of time as the court think fit (*n*). Where the authority have themselves acquired a leasehold interest in a house, the jurisdiction of the county court to relax the provisions of a lease and to make a charging order is exercisable by the M. of H. (*o*). [535]

Advances for Carrying Out Repairs.—The council of a county, borough or district (*p*), have power in certain circumstances to advance money to persons or bodies of persons carrying out, or undertaking to carry out, repairs to a house (*q*). It seems that the power may be exercised in favour of any person or body of persons, provided the council consider that, having regard to the cost of the repairs and the financial position of the person making application for an advance, it is reasonable to give him assistance (*r*). Before making any advance

(*m*) Housing Act, 1925, s. 7 (4) (13 Statutes 1007). For example it may be necessary to pierce a main wall in order to comply with a bye-law designed to secure safety from fire. The duty of compliance may be cast by the bye-law upon a lessee whose lease has more than three years to run, and there may be in the lease a covenant prohibiting the piercing of a main wall. In such a case the authority could do the work themselves, and recover the expenses from the lessee; and the lessee may be unable to recover any part of the expenses from the lessor. A less high-handed way is for the authority to apply to the court under s. 7 (4). It is submitted that they should adopt the alternative in cases when the covenant is couched in impersonal terms (e.g. a covenant that "the main walls shall not be pierced"); for then the act of the authority in doing the work may involve the lessee in an action for breach. Any application must be made by the authority; the lessee has no power to make one.

(*n*) *Ibid.*, s. 7 (4) (b), (5); 13 Statutes 1008. See title CHARGING ORDERS. The application must, it seems, be made by the authority.

(*o*) *Ibid.*, s. 7 (6); 13 Statutes 1008.

(*p*) See *ibid.*, ss. 80, 92; 13 Statutes 1043, 1054.

(*q*) *Ibid.*, s. 92 (13 Statutes 1054), as extended by Housing Act, 1930, s. 47 (23 Statutes 430).

(*r*) It does not seem to be necessary that the house should be situate within the area of the council.

the council must be satisfied that when the repairs are executed the house will be in all respects fit for human habitation. It seems that no advance can be made if the estimated value of the fee simple of the house free from incumbrances exceeds £800, nor when the superficial area (measured in accordance with rules made by the Minister of Health (s)), of a two-storied house is less than 620 superficial feet, or of a structurally self-contained flat or a one-storied house is less than 550 superficial feet (t).

No advance can be made until a valuation of the house has been made on behalf of the council. Repayment of the advance, together with interest thereon (u), must be secured by a mortgage of the house, and the amount of the advance may not exceed 90 per cent. of the value of the interest of the mortgagor in the house (a). The mortgage deed may provide for repayment being made either by instalments of principal, or by an annuity of principal and interest combined (b), but the deed must provide for repayment of the whole amount outstanding on breach of any of the conditions under which the advance is made. The advance may be made by instalments as the works are executed, but the total amount of the advance may not at any time exceed 50 per cent. of the value of the works done up to that time, together with the value of "the interest of the mortgagor in the site" of the house (c). No advance may be made upon the security of a leasehold interest unless at the date of the advance the unexpired residue of the term exceeds by at least ten years the period during which repayment of the advance must be made (d). An authority or county council may borrow for the purpose of making an advance under this power (e), and the Public Works Loan Commissioners may lend to them any money which may be so borrowed (f). [536]

Power to Authorise Superior Landlord to Enter and Execute Works.—

Under the terms of a lease, a landlord may be unable to enter the premises for the purpose of carrying out works necessary to prevent them from becoming unfit for human habitation. At the same time he may have no means of compelling his tenant to carry out such works. It is accordingly provided (g) that any person who is entitled to any interest in any land used in whole or in part as a site for houses for the working classes may apply to the court, and that upon any such application the court may make an order empowering the applicant to enter on the land and to execute any necessary works within the time fixed by the order. Before an order can be made the applicant must prove that the premises or the land are likely to become dangerous

(s) See these rules in a circular (No. 520) of the M. of H. on the Housing (Financial Provisions) Act, 1924, dated August 20, 1924.

(t) Housing Act, 1925, s. 92; 13 Statutes 1054, as amended by Housing Act, 1935, s. 76, and as applied by Housing Act, 1930, s. 47; 23 Statutes 430.

(u) There is no power to prescribe a rate of interest.

(a) It is submitted that this value must be based on the value of the house after the repairs have been executed. This seems to be indicated by the terms of the power to advance by instalments.

(b) It is thought that the mortgage deed *must* provide for repayment in one of these ways. In the case of a mortgage of a leasehold interest at any rate the Act appears to contemplate that the advance will be repaid during a fixed period.

(c) Housing Act, 1925, s. 92 (3) (b), amended by the Act of 1935, s. 76 (1). These words appear to contemplate an advance for building a new house; and it is not clear that an alternative phrase to cover an advance for alterations or repairs can safely be substituted.

(d) Housing Act, 1925, s. 92 (3); 13 Statutes 1055.

(e) *Ibid.*, s. 84 (1) (c), 85 (1); *ibid.*, 1048, 1049.

(f) *Ibid.*, s. 89 (1); *ibid.*, 1050.

(g) *Ibid.*, s. 30 (1); *ibid.*, 1020.

or injurious to health or unfit for human habitation, and that the interests of the applicant will be prejudiced thereby. The court on any such application may order that any lease or agreement for a lease held from the applicant and any derivative underlease shall be determined, subject to such conditions and to the payment of such compensation as the court may think just (*h*).

Provisions may be inserted in the order designed to secure that the proposed works are in fact carried out, and the order may authorise the local authority (*i*) of the area to exercise such supervision or to take such action as may be necessary for the purpose. Thus the order may apparently empower the local authority, on a failure by the applicant to execute the proposed works within a specified time, to enter upon the land and themselves execute the works and recover the expense of so doing from the applicant.

When the capital value of the fee simple of the land does not exceed £500 the application may be made to the county court in whose jurisdiction the land is situated. Otherwise the application is made to the High Court or to the Court of Chancery of the county palatine of Lancaster or Durham where the land is situated within the respective jurisdictions of those courts (*j*). [587]

Statutory Conditions Implied on Letting Certain Houses.—The general rule of common law is that on the letting of an unfurnished dwelling-house there is no implied condition or warranty by the landlord that the premises are at the time of the letting fit for human habitation; nor is there on the letting of any house, furnished or unfurnished, any implied obligation on the part of the landlord to keep the premises fit for human habitation or indeed to execute any repairs to them at all during the currency of the tenancy (*k*). On the other hand, the common law imposes an obligation on the tenant, in the absence of any agreement to the contrary, to do such repairs as will keep the house wind-proof and watertight (*l*).

Further, special circumstances may create a warranty of fitness, and in *Bunn v. Harrison* (*m*) the Court of Appeal expressly left open the question whether there is an implied warranty in the case of an unfurnished house if it be let for immediate occupation. The rule that there is no warranty is different with respect to furnished houses or apartments, in which case the law implies, in the absence of agreement to the contrary, a warranty by the landlord as to the state and fitness of the premises. Infestation by insects (*n*), defective drainage (*o*), insufficient disinfection following measles (*p*) and recent occupation by a consumptive (*q*), will justify an intended tenant in repudiating his tenancy, but *per contra* an intending tenant of furnished lodgings does not warrant that he is a fit and proper person to occupy them and is not suffering from an infectious disease (*r*).

(*h*) Housing Act, 1925, s. 30 (1); 13 Statutes 1020.

(*i*) I.e. the borough council or district council.

(*j*) It seems that this is the effect of Housing Act, 1925, s. 30 (3); 13 Statutes 1020.

(*k*) See *Hart v. Windsor* (1844), 12 M. & W. 68 (31 Digest 127, 2613); *Lane v. Cox*, [1897] 1 Q. B. 415 (31 Digest 179, 3120); *Sarson v. Roberts*, [1895] 2 Q. B. 395; 31 Digest 180, 3121 (furnished house).

(*l*) See *Wedd v. Porter*, [1916] 2 K. B. 91; 31 Digest 61, 2079.

(*m*) *Bunn v. Harrison* (1886), 3 T. L. R. 146; 31 Digest 177, 3094.

(*n*) *Smith v. Mariable* (1843), 11 M. & W. 5; 31 Digest 179, 3122.

(*o*) *Wilson v. Finch Hatton* (1877), 2 Ex. D. 336; 31 Digest 179, 3124.

(*p*) *Bird v. Lord Greville* (1884), Cab. & El. 317; 31 Digest 180, 3137.

(*q*) *Collins v. Hopkins*, [1923] 2 K. B. 617; 31 Digest 179, 3125.

(*r*) *Humphreys v. Miller*, [1917] 2 K. B. 122, C. A.; 38 Digest 201, 364. This

By sect. 1 of the Housing Act, 1925 (*s*), there is now implied in any contract for the letting for habitation of certain houses a condition that the house is at the commencement of the tenancy in all respects reasonably fit for human habitation, and an undertaking that it will be kept so fit by the landlord (*t*) during the continuance of the tenancy. This condition and undertaking arise notwithstanding any stipulation to the contrary contained in the contract for letting. They apply only on the letting of a dwelling-house at a rent not exceeding £26, if the house is situated outside London, but if the house is not within a borough or urban district with a population of 50,000, and the rent exceeds £16 the section applies only if the contract was made on or after July 31, 1928 (*u*). There is also an exception in the case of a house let for not less than three years on the terms that it shall be put by the lessee in a condition reasonably fit for habitation, and the lease is not determinable at the option of either party before the expiration of three years (*a*). [538]

The extent and nature of the landlord's obligation under the implied conditions and undertaking has been discussed in a number of cases (*b*). But these must now be read in the light of the direction contained in the Housing Act, 1930 (*c*), that in determining whether a house is fit for human habitation regard shall be had to the extent to which it falls short of the bye-laws in force or of any local Act as to new buildings, or of the general standard of housing accommodation of the working classes in the area (*d*). On breach of the condition the tenant may either repudiate the tenancy, or accept the tenancy and sue for damages (*e*). On breach of the undertaking he may sue for damages. The proper measure of damages is the difference between the value of the premises to the tenant as they are, and their value as they would be had the landlord performed his obligation, together with any consequential loss such as damage to furniture or personal injuries resulting from the condition of the premises. No action will lie for a breach of the undertaking unless and until the landlord has notice of the defect which renders the house unfit for human habitation (*f*). For the purpose of discovering the existence of such defects, the landlord or any person authorised by him in writing may at any reasonable times of the day, on giving twenty-four hours' notice in writing to the tenant or occupier enter the premises for the purpose of viewing their state and condition (*g*). The implied condition and undertaking run

case was described by McCARDIE, J., in *Collins v. Hopkins*, *supra*, as being opposed alike to sound policy and to legal principle, and he expressed the hope that it would be considered by the highest appellate tribunal.

(*s*) 13 Statutes 1002.

(*t*) The expression "landlord" means any person who lets any house to a tenant for habitation.

(*u*) The house need not be occupied or of a kind suitable for occupation by persons of the working classes.

(*a*) See Housing Act, 1925, s. 1 (*i*); 13 Statutes 1002.

(*b*) *Walker v. Hobbs & Co.* (1889), 23 Q. B. D. 458 (31 Digest 181, 3159); *Chester v. Poxell* (1885), 52 L. T. 722 (31 Digest 179, 3126); *Jones v. Geen*, [1925] 1 K. B. 680 (31 Digest 315, 4568); *Morgan v. Liverpool Corp.*, [1927] 2 K. B. 131 (C. A.) (Digest (Supp.)).

(*c*) S. 62 (3) (23 Statutes 436), as amended by Part II. of Sched. VI. to Act of 1935.

(*d*) This definition appears to be derived from the judgment of ATKIN, L.J., in *Morgan v. Liverpool Corp.*, *supra*, at pp. 145-6.

(*e*) See *Walker v. Hobbs & Co.* (*supra*).

(*f*) This seems to be the effect of the Court of Appeal's decision in *Morgan v. Liverpool Corp.* (*supra*). But see *Fisher v. Walters*, [1920] 2 K. B. 315 (31 Digest 181, 3160), a case that was cited in argument in *Morgan's Case*, but is not referred to in the judgments.

(*g*) Housing Act, 1925, s. 1 (2); 13 Statutes 1002.

with the reversion so as to bind all persons into whose hands the house comes. They are essentially contractual, and it has accordingly been held that no action lies upon them at the suit of a person who is a stranger to the contract (*h*). They extend to a part of a building which is let as a separate tenement, but do not impose any obligation on the landlord to keep in repair a common staircase (*i*). [539]

The occupation of a house often forms part of the remuneration of a workman under his contract of employment. There is then no contract with regard to the letting of the house in which the condition and undertaking as to fitness could be impliedly incorporated. It is, however, provided (*k*) that where a workman is employed in agriculture for whom a house or part of a house is provided as part of his remuneration, there shall be implied as part of the contract of his employment a condition and undertaking with regard to the premises he occupies identical with those mentioned above. It is thought that the obligation arises only with regard to a house the rental value of which would not exceed the maximum of £26 if the house were let. The employer's liability under such a contract of employment does not prejudice the obligation of any other person to repair the house by virtue of some lease or agreement or any remedy for enforcing such an obligation. [540]

London.—Part I. of the Housing Act, 1925, as amended by the Housing Act, 1930, extends to London. Sect. 1 (Conditions Implied on Letting Houses for Habitation) fixes the maximum rent within the section in London at £40. The exception in sub-sect. (4) for contracts made before July 31, 1923, in respect of houses of over £16 rent does not apply to London.

As to the modification of sect. 6 (Bye-laws) in its application to London, see p. 107 of Vol. VI.

Part II. of the Housing Act, 1930, as to the repair or demolition of insanitary houses, also extends to London. Local authorities for this Part of the Act and for Part I. of the Housing Act, 1925, are the metropolitan borough councils and the City corporation (sects. 24, 63).

Sect. 70 of the L.C.C. (General Powers) Act, 1933 (*l*), empowers the Kensington borough council, in dealing with improvement areas, to close parts of houses and to prohibit the use of basement rooms as living rooms.

Provisions comparable to, but somewhat stricter than those contained in sects. 71 to 75 of the P.H.A., 1875, as to occupation, etc., of underground rooms as dwellings, are contained in sects. 96 to 98 of the P.H. (London) Act, 1891 (*m*). See also sect. 43 of the London Building Act, 1930 (*n*), as to the lighting and ventilation of habitable basements.

Sect. 28 of the L.C.C. (General Powers) Act, 1928 (*o*), allows a petty sessional court, on application by the M.O.H., to make orders for the removal of persons who are certified by the medical officer to be :

- (1) aged or infirm or physically incapacitated, and reside in premises in his area which are insanitary owing to any neglect on the part of the occupier thereof, or under insanitary conditions; or
- (2) suffering from any grave chronic disease.

To act under this section the medical officer must be authorised in that behalf by a resolution of the sanitary authority, *i.e.* the corporation as respects the City, and the borough council as respects any metropolitan borough. [541]

(h) *Ryall v. Kidwell & Son*, [1914] 3 K. B. 135; 31 Digest 348, 4903.

(i) *Dunster v. Hollis*, [1918] 2 K. B. 795; 31 Digest 100, 2385.

(k) Housing Act, 1925, s. 2: 13 Statutes 1002, in part repealed by Housing Act, 1935.

(l) 26 Statutes 600.

(n) 23 Statutes 236.

(m) 11 Statutes 1077, 1078.

(o) 11 Statutes 1410.

INSANITY

See MENTAL DISORDER AND MENTAL DEFICIENCY.

INSPECTION OF PARISH BOOKS
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See PARISH DOCUMENTS; RECORDS AND DOCUMENTS.

INSPECTORS OF FOOD AND DRUGS

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See also titles :

FOOD AND DRUGS;
FOOD AND DRUGS AUTHORITIES;
INSPECTORS OF WEIGHTS AND
MEASURES;

OFFICERS OF LOCAL AUTHORITIES;
SAMPLING OF FOOD AND DRUGS.

Sampling Officers.—The expression “inspector of food and drugs” is not used in any statute. The designation of a person authorised by a food and drugs authority (a) to enforce the Food and Drugs (Adulteration) Act, 1928 (b), is a “sampling officer.” He must be a M.O.H., sanitary inspector, inspector of weights and measures, market inspector or police constable (c). In practice, sampling officers in boroughs are usually sanitary inspectors, and in county areas, inspectors of weights and measures or police constables. [542]

Powers of Sampling Officers.—Sampling officers have a right to demand that a sample of any food or drug exposed for sale, or on sale by retail, in their area shall be sold to them (d). If an officer wishes to enforce this right against a tradesman to whom he is unknown he should produce his authority (e), the most convenient method being by showing a document, signed by the clerk of the council, certifying

(a) See title FOOD AND DRUGS AUTHORITIES, Vol. VI., p. 128.

(b) 8 Statutes 884 *et seq.*

(c) S. 16 (1); 8 Statutes 894.

(d) S. 16 (5); *Ibid.*, 895.

(e) *Payne v. Hack* (1893), 58 J. P. 165; 25 Digest 72, 23.

that he is authorised to act as a sampling officer. He may make purchases by deputy, and in practice a sampling officer frequently (and wisely) employs an agent to make purchases on his behalf, the officer being then deemed to be the purchaser (f). It is an offence wilfully to obstruct or impede an "inspector or other officer"—a phrase which may include an agent in some circumstances—or to offer bribes (g). For the powers of sampling officers to procure samples without purchase, see titles BUTTER, MARGARINE AND CHEESE; MILK AND DAIRIES, and SAMPLING OF FOOD AND DRUGS. [543]

Analysis of Samples.—The sampling officer must submit to the public analyst any sample procured which he suspects to have been unlawfully sold (h). If he has no reason for suspicion, the question of submitting the sample to analysis is one for the officer's discretion. A sampling officer who wishes to be in a position to institute proceedings should, if he has not personally purchased the sample, be, and be able to prove that he is, "the person causing the analysis to be made"; for this is the only person expressly empowered to prosecute (i), and it would not appear probable that the procedure contemplated by the Act of 1928 has been varied by the general provision in sect. 277 of the L.G.A., 1933 (k), so as to entitle any officer authorised by the local authority to do so. [544]

Procedure in Prosecutions.—A sampling officer has full statutory power to institute proceedings at his discretion, but it is not unusual for him, by arrangement with the local authority, to obtain approval from a committee or senior officer before doing so. He need not produce in court formal proof of his authority (l). He is entitled, though not a solicitor, to conduct prosecutions if authorised to do so (k). Apparently it is intended that he may both examine witnesses and address the bench. [545]

Other Statutes.—Sampling officers who are to be in a position to enforce the various statutes and orders which are supplementary to the principal Act should receive formal authority from their council. This applies particularly to the Milk and Dairies (Consolidation) Act, 1915 (m), the Milk and Dairies (Amendment) Act, 1922 (n), the Artificial Cream Act, 1929 (o), and the regulations under the P.H.As. as to preservatives (p), condensed milk (q) and dried milk (r). It is often convenient that a sampling officer should also be authorised to enforce

(f) *Horder v. Scott* (1880), 5 Q. B. D. 552; 25 Digest 76, 53; *Stace v. Smith* (1880), 45 J. P. 141; 25 Digest 71, 9; *Garforth v. Esam* (1892), 56 J. P. 521; 25 Digest 71, 10; *Tyler v. Dairy Supply Co., Ltd.* (1908), 98 L. T. 867; 25 Digest 71, 12.

(g) S. 24; 8 Statutes 899.

(h) S. 17 (1); *ibid.*, 895.

(i) S. 27 (2); *ibid.*, 900.

(k) 26 Statutes 452.

(l) *Hale v. Cole* (1891), 55 J. P. 376; 25 Digest 107, 315; *Ross v. Helm*, [1918] 3 K. B. 462; 25 Digest 107, 376.

(m) 8 Statutes 864. See title MILK AND DAIRIES.

(n) *Ibid.*, 870.

(o) *Ibid.*, 908. See title ARTIFICIAL CREAM.

(p) S.R. & O., 1925, No. 775; 1926, No. 1537; and 1927, No. 577. See title PRESERVATIVES.

(q) S.R. & O., 1923, No. 509; 1927, No. 1092. See title CONDENSED MILK.

(r) S.R. & O., 1923, No. 1223; 1927, No. 1093. See title CONDENSED MILK.

marking orders under the Merchandise Marks Act, 1926 (*s*), and certain provisions of the Agricultural Produce (Grading and Marking) Acts, 1928 and 1931 (*t*). [546]

London.—Inspectors of food and drugs in London are appointed by the metropolitan borough councils and the Common Council of the City, who are the authorities in London for administering the Acts previously mentioned in this title. [547]

(*s*) 19 Statutes 898.

(*t*) See title MARKING OF AGRICULTURAL PRODUCE.

INSPECTORS OF LIGHTING AND WATCHING

See LIGHTING AND WATCHING.

INSPECTORS OF MINISTRY OF HEALTH

See GOVERNMENT AND LOCAL INSPECTORS; GOVERNMENT CONTROL; INQUIRIES.

INSPECTORS OF WEIGHTS AND MEASURES

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See also titles:

COAL WEIGHING;
INSPECTORS OF FOOD AND DRUGS;
OFFICERS OF LOCAL AUTHORITIES;

PETROL FILLING STATIONS;
WEIGHTS AND MEASURES.

Appointing Authorities.—The local authorities administering the Weights and Measures Acts, 1878 to 1926 (*a*), and therefore responsible for the appointment of inspectors of weights and measures are: in the City of London, the corporation; elsewhere in London, the L.C.C.;

(*a*) 20 Statutes 369 *et seq.* See title WEIGHTS AND MEASURES.

in all county boroughs and in some other boroughs, the borough council ; elsewhere, the county council. Under the Act of 1878, the council of a borough which had not a separate court of quarter sessions was not an authority unless they so resolved, but if the borough had provided standards and appointed an inspector before that Act came into operation, it remained an authority unless the council otherwise resolved (*b*). But if a non-county borough, whether a quarter sessions borough or not, had a population of less than 10,000 at the census of 1881, the powers of the council were transferred to the county council by sect. 39 of L.G.A., 1888 (*c*). It may be noted that in the Charters granted to some recently created boroughs there is an express provision debarring the council from resolving to be a weights and measures authority. [548]

Qualification and Appointment of Inspectors.—Every weights and measures authority must appoint a sufficient number of inspectors and remunerate them reasonably (*d*). Different persons may be appointed for verification and inspection respectively. Before appointment, the officer must have obtained a certificate of qualification, awarded after an examination held usually twice or thrice in each year by the Standards Department of the Board of Trade (*e*). The chief officer of that department is the Controller of Standards, Old Palace Yard, Westminster, S.W.1. A schedule of the examination syllabus may be purchased at H.M. Stationery Office. No person may sit for the examination unless nominated for that purpose by a weights and measures authority, and in practice nominations are, as a general rule, only given to persons in the employment of these authorities, though there may be exceptions to the rule. The Board of Trade have asked that local authorities should not nominate candidates who are much below the required standard or are insufficiently trained.

An inspector may be suspended or dismissed by his authority (*f*), but the authority and the officer may agree under sect. 121 of L.G.A., 1933 (*g*), that notice of a specified duration shall be given of a resignation or dismissal. The Board of Trade require to be notified promptly of all appointments, resignations and dismissals, but have no power of veto and no power to approve or disapprove of the salary proposed. A list of inspectors must be included in a return to be made annually to the Board (*h*). The Board, under sect. 5 of the Weights and Measures Act, 1904 (*i*), have power to make regulations "for the guidance of" local authorities in the execution of their functions under the Acts ; and have been known to make representations urging the appointment of additional inspectors. [549]

Formalities after Appointment.—On appointment, an inspector must forthwith enter into a personal recognisance to the Crown in the sum of £200 for the due performance of his duties, including the safe custody of standards and stamps, and the payment over of all fees received (*k*). When appointed, the inspector should receive a general

(*b*) Act of 1878, s. 50 and Sched. IV. ; 20 Statutes 382, 393.

(*c*) 10 Statutes 717.

(*d*) Act of 1878, s. 43 ; 20 Statutes 379.

(*e*) Act of 1904, s. 8 ; *ibid.*, 410.

(*f*) Act of 1878, s. 43 ; *ibid.*, 379.

(*g*) 26 Statutes 370.

(*h*) Weights and Measures Regulations, 1907 ; S.R. & O., 1907, No. 698.

(*i*) 20 Statutes 409.

(*k*) Act of 1878, s. 43 ; 20 Statutes 379.

warrant under the hand of a justice of the area, empowering him to enter trade premises and to inspect, test, and, if necessary, seize weighing and measuring appliances in use, or in possession for use, for trade (*l*). On the production of such a warrant, his powers of entry and inspection are complete. [550]

Principal Duties.—The chief duties of an inspector under the Weights and Measures Acts consist of :

(1) The custody and care of standards, stamps, and equipment ; (2) the verification of weighing and measuring appliances to be used for trade—a work which involves receiving and accounting for verification fees, and the giving of any necessary certificates of verification ; (3) the inspection of such appliances used or kept for trade, and the prevention of their fraudulent use ; (4) the enforcement of provisions relating to the sale of food and coal by weight—or, as respects some foods, by measure or number ; and (5) the compilation of records of work performed, which usually involves the keeping of a register of traders.

These duties are for the most part vested in qualified inspectors exclusively, subject to exceptions mentioned below. The duties are discussed in some detail in the Board of Trade's Instructions, scheduled to the Weights and Measures Regulations of 1907 (*m*).

While much personal responsibility for the proper performance of his duties is vested, under special penalties, in the inspector himself (*n*), it is the duty of the local authority to provide him with adequate office accommodation and equipment to the satisfaction of the Board of Trade, to arrange for the requisite visitation of premises and attendance at centres for verification, and to cause the inspector to make the prescribed annual reports (*o*). The inspector's discretion in the verification, condemnation or seizure of appliances is limited by statutory regulations (*p*) and should be exercised in conformity with the general instructions of the Board of Trade. The fees to be charged for verification (including fees to be charged when appliances are rejected as incorrect) are also fixed by regulations (*q*), and may only be varied with the special sanction of the Board. [551]

Adjusters.—On the application of the local authority, the Board of Trade may authorise an inspector to act as an adjuster of weights and measures, at charges to be approved by the authority (*r*). The Board have indicated the charges which should so be made (*s*). The Board do not ordinarily grant authority to adjust appliances, except in areas where there is a scarcity of skilled scalemakers.

(*l*) Act of 1873, s. 48 ; 20 Statutes 381.

(*m*) S.R. & O., 1907, No. 698.

(*n*) Act of 1873, s. 49 (20 Statutes 381), Act of 1904, s. 5 (4) (20 Statutes 409).

(*o*) Weights and Measures Regulations, 1907 ; S.R. & O., 1907, No. 698.

(*p*) S.R. & O., 1907, No. 698 ; 1926, Nos. 1343, 1659 ; 1932, No. 557 ; Weights and Measures (Leather Measurement) Regulations, 1921 (S.R. & O., No. 942) ; Measuring Instruments (Liquid Fuel and Lubricating Oil) Regulations, 1929 (S.R. & O., Nos. 163, 751) ; Cran Measures Regulations, 1908 (S.R. & O., No. 916). See also Sale of Food (Weights and Measures : Prepacked Articles) Regulations, 1927 (S.R. & O., No. 523).

(*q*) Weights and Measures (Verification and Stamping Fees) Order, 1926 (S.R. & O., No. 969), and an amending order (1929, S.R. & O., No. 482), applying to instruments for measuring liquid fuel and lubricating oil.

(*r*) Act of 1889, s. 12 ; 20 Statutes 397.

(*s*) Board of Trade Rules, September 1, 1906, and July 1, 1918.

An inspector of weights and measures may not derive profit from, or be employed in, the making, adjusting or selling of weighing or measuring appliances (*t*); nor should he recommend any scalemaker or tradesman engaged in such work. [552]

Powers of Prosecution.—With the general consent of the local authority—which should be certified in a formal document signed by their clerk—an inspector of weights and measures may prosecute, without any other special authorisation, before a court of summary jurisdiction in any case arising under the Weights and Measures Acts or in the discharge of his duties (*u*). [553]

Delegation of Powers.—If the local authority so direct, the functions of an inspector under the Sale of Food (Weights and Measures) Act, 1926, may be exercised, on behalf of an inspector, by a subordinate officer who is not an inspector (*a*). Although sect. 13 of the Act of 1926 is to be construed as one with the Weights and Measures Acts, 1878 to 1926, it should not be assumed that functions which are by those statutes specially reserved, under penalties, to inspectors who have passed the prescribed examination and entered into personal recognisances, may be delegated to unqualified persons. A manifest discrepancy would arise if it were otherwise.

It is to be noted, however, that inspections under Part II. of the Weights and Measures Act, 1889 (*b*), which deals with the sale of coal, may, under sects. 27, 29 of that Act, be made by officers, who need not be inspectors, appointed for the purpose by the local authority. [554]

Other Powers and Duties.—In some areas, inspectors of weights and measures have duties to perform under sect. 15 of the Coal Mines Regulation Act, 1887 (*c*), sect. 117 of the Factory and Workshop Act, 1901 (*d*), and sects. 2 to 4 of the Cran Measures Act, 1908 (*e*). They are also among the classes of officers who may act as sampling officers under sect. 16 of the Food and Drugs (Adulteration) Act, 1928 (*f*); and are often authorised to enforce many other statutory provisions, including those of the Explosives Acts, Fertilisers and Feeding Stuffs Act, Merchandise Marks Acts, Shops Acts, sect. 27 of the Road Traffic Act, 1930, and the Markets and Fairs (Weighing of Cattle) Acts.

The work of a staff of inspectors is sometimes placed under the general supervision and control of a chief inspector, chief constable, or public control officer. The present tendency is towards the separation of the work from police duties, though in some areas all inspectors are still members of the local constabulary. [555]

London.—Inspectors of weights and measures in London are appointed by the L.C.C. for the county, exclusive of the city. Sect. 16 of the Weights and Measures Act, 1889 (*g*), provides that inspectors appointed by the county council shall alone within the county, exclusive of the city, have the powers and duties of inspectors of weights and measures appointed under the Act of 1878. The City of London

(*t*) Act of 1889, s. 12; 20 Statutes 397.

(*u*) Act of 1904, s. 14; *ibid.*, 412. See also *Tyler v. Ferris*, [1906] 1 K. B. 94 (44 Digest 188, 67), which shows that a general consent suffices, and s. 277 of L.G.A., 1933 (26 Statutes 452).

(*a*) Act of 1920, s. 18 (3); 20 Statutes 426.

(*b*) 20 Statutes 399, and see title COAL WEIGHING.

(*c*) 12 Statutes 53.

(*d*) 20 Statutes 413.

(*e*) 20 Statutes 393.

(*f*) 8 Statutes 579.

(*g*) 8 Statutes 894.

appoints its own inspectors. Sects. 67, 68 of the Act of 1878 (*h*), contain savings as to the right of the Founders' Company and of the City corporation, but notwithstanding these sections, a person using weights and measures in the City of London is not required to have them verified or stamped by more than one authority (*i*).

In addition to inspectors of weights and measures, the L.C.C. and the City corporation appoint special "coal officers" under sect. 41 of the L.C.C. (General Powers) Act, 1926 (*h*), to examine coal sold for domestic purposes in order to ascertain that it does not contain an undue proportion of slack or incombustible matter. These officers also weigh loads of coke under the powers conferred by sect. 55 of the L.C.C. (General Powers) Act of 1928 (*l*). See also title COAL WEIGHING. [556]

(*h*) 20 Statutes 386.

(*i*) Act of 1889, s. 17; 20 Statutes 390.

(*h*) 11 Statutes 1383.

(*l*) *Ibid.*, 1415.

INSTALMENT METHOD

See BORROWING; MORTGAGES; RATE COLLECTION.

INSTITUTE OF MUNICIPAL TREASURERS AND ACCOUNTANTS (INCORPORATED)

The Institute (*a*) was established in 1885 and incorporated in 1901. By special licence of the Board of Trade it is permitted to dispense with the word "limited" as part of its name. Its chief objects are (1) to discuss questions relating to local government finance and to interchange opinions and experiences of members; (2) to obtain from members and other sources information relating to local government finance and to disseminate such information by means of its monthly journal, or otherwise; (3) to afford information on local government finance to the legislature, public bodies and the press; (4) to improve the technical and general knowledge of persons engaged in the local government financial service and to hold examinations for this purpose; and (5) to establish a library and to encourage research.

(*a*) The offices of the Institute are at 1 Buckingham Street, Westminster, London, S.W.1.

By its constitution the Institute may not concern itself with any question affecting the personal interests of its members, but devotes itself exclusively to the financial interests of local authorities.

Honorary members comprise lord mayors, mayors and provosts, chairmen of county and district councils, and chairmen and other members of finance committees of such authorities, and are annually elected by the council of the Institute on the nomination of the local authority. In addition, the council have the power to elect to honorary membership persons (usually former Fellows) who have rendered special service to the Institute.

The qualifications for election to fellowship are that a candidate must (1) hold a whole-time appointment as the chief financial officer of a local authority and satisfy the council that the nature of his duties justifies his election; (2) be directly responsible to such local authority for the performance of his duties; and (3) be an associate of at least five years' standing.

The qualifications for election to associateship are that a candidate must (i.) hold a whole-time appointment as an officer of a local authority; (ii.) be engaged in the finance department (or audit department) of such local authority or, where no separate finance department exists, be engaged at least mainly on the general financial work of such local authority; and (iii.) have passed the final examination of the Institute.

The qualifications for admission to studentship are as in (i.) and (ii.) above and that the candidate shall have passed (or been exempted from) the intermediate examination of the Institute. [557]

The work of the Institute is carried on by a council. Only Fellows are eligible for election as officers or members of the council but, with this exception, associates have the same rights and privileges in the Institute as Fellows.

The council delegate detailed consideration of nearly all of the matters submitted to them to committees. Apart from domestic matters (*e.g.* examinations and the arrangements for the annual meeting), the council's time is devoted to the consideration of technical problems, and it is in constant touch with the various Government departments concerned with local authorities, and is consulted by them on financial matters.

The Institute has been an examining body since 1903, and the passing of its final examination is now generally recognised as a necessary qualification for promotion or for obtaining a senior appointment under a local authority. Every candidate for the intermediate examination must, without exception, have passed one of a number of recognised examinations of the school certificate or higher standard. In addition, candidates must have had four years' service in the finance department of a local authority and be at least twenty years of age. The final examination consists of two parts which may be taken either separately or at one sitting, and the minimum ages of entry are twenty-one and twenty-two years, and the minimum periods of service five years and six years, for Part I. and Part II. of the examination respectively. [558]

INSTITUTE OF PUBLIC ADMINISTRATION

See PUBLIC ADMINISTRATION, INSTITUTE OF

INSTITUTION CHILDREN

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See also title: BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN.

Introduction.—The Education (Institution Children) Act, 1923 (a), is headed "An Act to amend the law relating to the education of children who are receiving education in an area other than that to which they belong." It aimed at remedying the injustice caused by the obligation of the local education authority for elementary education to provide for the education of children who are inmates of an institution situate in their area. This state of affairs was illustrated in *Gateshead Union v. Durham County Council* (b) where it was held by the Court of Appeal that a board of guardians had the right to send poor law children living in cottage homes in the area of a local education authority to any public elementary school in that area in which there was room. [559]

Institution Children Attending Day Schools.—This grievance of local education authorities was removed by the Act of 1923, which deals with (i.) children residing in a workhouse, or an institution to which they have been sent from a workhouse by a board of guardians (now by L.G.A., 1929 (c), the council of a county or a county borough), (ii.) children boarded out by a public assistance authority, or (iii.) children resident in a charitable institution, where any such children attend as day scholars a public elementary school or a school certified by the Board of Education under Part V. of the Education Act, 1921 (d), maintained by a local education authority for elementary education for an area other than that to which they belong. In all such cases the local education authority of the area to which the children belong must, if

(a) 7 Statutes 226.

(b) [1918] 1 Ch. 146; 10 Digest 553, 7.

(c) L.G.A., 1929; 10 Statutes 883.

(d) 7 Statutes 159.

required to do so, pay the local education authority who educate the children the cost (e) of their education on the following basis:

For Each Child Attending an Ordinary Public Elementary School.—The average net cost per pupil to be met from the rates in the preceding financial year of educating children in public elementary schools in the area in which the children are being educated.

For Each Child Attending a Certified School.—The average net cost per pupil to be met from the rates in the preceding financial year of educating children in schools of the same type in that area (f). [560]

The authority responsible for defraying the cost of the education of institution children attending day schools, if the child is (i.) resident in a workhouse, (ii.) resident in an institution to which he has been sent from the workhouse by the public assistance authority, or (iii.) boarded out by the public assistance authority, is the authority for the area in which his place of poor law settlement is situated. For this purpose the area in which a place of settlement of a child is situated is deemed to be the parish which would have been the place of settlement had the L.G.A., 1929, not been passed (g).

Settlement and not irremovability determines the area to which a child belongs, though the acquisition of a settlement by residence depends on irremovability. Apparently the provision already mentioned merely substitutes the parish for the county or county borough, and did not oust sects. 109 to 119 of the Poor Law Act, 1927, as to the mode in which a settlement is acquired, or the provisions which have been substituted for these sections by sects. 84 to 92 and 104 of the Poor Law Act, 1930 (h). As the Act of 1927 refers to acquisition of settlement in a parish, it will assist the consideration of questions relating to the settlement of institution children if the provisions in the Act of 1927 are looked up. As to the acquisition of a settlement, see the title SETTLEMENT AND REMOVAL.

If the child is resident in a charitable institution (i), then he belongs to (i.) the area in England and Wales in which he last resided (k) for a continuous period of 6 months otherwise than in a charitable institution; or (ii.) if it cannot be ascertained that he has so resided in any area for 6 months, the area, being an area in England and Wales, in which he was born; or (iii.) if the Board of Education are of opinion that the area to which he belongs cannot be ascertained under (i.) and (ii.), such area as the Board of Education may determine, having regard to all the circumstances of the case. [561]

References to Board of Education.—If local education authorities are unable to agree as to the amount payable or as to the area to which a child in a charitable institution belongs or as to whether a child is resident in a charitable institution, the question must be referred to the

(e) B.E. Circular No. 1346, December 29, 1934, on the Act of 1923.

(f) Act of 1923, s. 1 (1); 7 Statutes 226.

(g) L.G.A., 1929, Sched. X., para. 18; 10 Statutes 998.

(h) 12 Statutes 1009—1016, 1026.

(i) A charitable institution includes any place in which persons are boarded or lodged from motives of charity, but it does not include any place in which less than twelve children between the ages of five and fourteen are so boarded and lodged (sect. 1 (4)).

(k) For cases on residence, see *Leicester Corp'n. v. Stoke-on-Trent Corp'n.* (1918), 88 L. J. (K. B.) 830; 19 Digest 578, 137; *Stoke-on-Trent Borough Council v. Cheshire County Council*, [1915] 3 K. B. 699; 19 Digest 577, 135; *Great Yarmouth Union v. Bethnal Green Union* (1907), 71 J. P. 422; 37 Digest 256, 506; *Newark Union v. Maidstone Union* (1905), 98 L. T. 602; 37 Digest 253, 486; *R. v. Norwood* (1867), L. R. 2 Q. B. 457; 37 Digest 256, 505.

Board of Education and the decision of the Board is final (*l*), and the Board may pay any such sum due to an authority and deduct it from the grant due to the creditor authority (*m*). But no sum is payable unless a claim for payment is made within two years after the end of the financial year during which the attendances on which the claim is based were made (*n*). [562]

Institution Children Attending Boarding Schools.—Although Part V. of the Education Act, 1921 (*o*), places on local education authorities a duty to make provision for the education of blind, deaf, defective and epileptic children, sect. 2 of the Act of 1923 (*p*) relieves from this duty an authority who have provided such a school to receive as boarders the children who belong to the area of another local education authority, unless the latter are willing to contribute towards the expense of the education and maintenance of these children a sum to be agreed between them. There is similarly no obligation on an authority to receive as boarders children who are resident in a public assistance institution, or in an institution to which they have been sent from a workhouse by a public assistance authority, or who are boarded out by such an authority (*p*).

The area to which children received as boarders belong is to be determined as if they attended a day school (see *ante*, p. 303). The local education authority who are making provision for the education of a boarder must continue to do so until any question as to the area to which he belongs has been settled (*q*). [563]

Contribution Orders.—The power of the Board of Education to make a contribution order applies to children receiving education as day scholars in a school certified under Part V. of the Education Act, 1921 (*r*), as it applies to children receiving education in public elementary schools (*s*). There appears to be no enactment dealing with the position which arises when a parent removes from the area of one local education authority to that of another while the child is attending a residential special school to which it has been sent by the former authority. Although there seems to be no power to compel the local education authority of the area to which the parent removes to take over the financial responsibility of the continued education of a child at a special residential school, in practice such responsibility is usually accepted. [564]

Attendance at Secondary and Technical Schools.—The Act of 1923 makes no provision for payments in respect of an institution child attending a secondary or junior technical school. It is submitted that there is a moral obligation on the local education authority of the area to which a child belongs to pay for such education, as there is a legal obligation if the child attended a public elementary school, but, as the Act does not cover the case, the district auditor might disallow payments made in respect of children attending a secondary school. [565]

London.—The position in London is the same as that in the rest of the country. [566]

(*l*) Act of 1923, s. 1 (5); 7 Statutes 228.

(*n*) *Ibid.*, s. 1 (7).

(*p*) Act of 1923, s. 2 (1).

(*r*) This deals with the education of blind, deaf, defective and epileptic children.

(*s*) Act of 1923, s. 2 (3) and Education Act, 1921, s. 128; 7 Statutes 229, 198. Apparently the same power does not apply to children receiving education as boarders in a school certified under Part V. of the Act of 1921.

(*m*) *Ibid.*, s. 1 (6).

(*o*) 7 Statutes 159.

(*q*) *Ibid.*, s. 2 (2).

INSTITUTIONAL RELIEF

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See also titles :

GUARDIANS COMMITTEE ;
MEDICAL SUPERINTENDENT ;
POOR LAW MEDICAL OFFICERS ;
PUBLIC ASSISTANCE ;

PUBLIC ASSISTANCE COMMITTEE ;
PUBLIC ASSISTANCE INSTITUTION MAS-
TER ;
PUBLIC ASSISTANCE IN LONDON.

Preliminary.—The Poor Relief Act of Elizabeth (43 Eliz. c. 2) contemplated that places should be provided by the overseers of each parish at which able-bodied poor persons should be set to work on a stock of flax or other raw materials, although dwelling-houses for the impotent poor were also to be provided. It was from this provision that the term "workhouse" was derived, a term which has lingered on in statutory usage and which is still the term employed in the Poor Law Act, 1930, for a poor law institution. It will be convenient in this title to adopt the same course.

Before the passage of the Poor Law Amendment Act, 1834, the Poor Law Commissioners recommended that more regulated workhouses should be established by the new boards of guardians. It was not apparently intended that there should be a single institution for each poor law union, where could be concentrated all persons requiring indoor relief, but that inmates should be classified, not in different parts of one building but in separate institutions. It is strange that it is only since the passing of the L.G.A., 1929, and the transfer of the administration of the poor law from boards of guardians to the county and county borough councils that the policy of the commissioners in 1834 has been brought into practical effect. Classification *by* institutions as distinct from classification *in* institutions was not entirely achieved during the long period in which the poor law was administered by boards of guardians, and it is doubtful whether in rural areas a scheme of classification is completely practicable. Under the Poor Law Amendment Act, 1834, a union workhouse was established in each poor law union, and the Poor Law Commissioners, subsequently replaced by the Local Government Board, issued general orders or

regulations which defined in great detail the mode in which each institution was to be administered, and the duties of the officers. The general workhouse, erected in most parts of the country in 1834 and 1835, was usually built at a convenient centre, and was not merely a resting-place for the able-bodied man, with his wife and dependent children, but in the words of the Poor Law Commissioners was "like-wise a receptacle for the sick, the aged and bedridden, deserted children and vagrants, as well as harmless lunatics, together with persons who need constant and careful supervision, including a nursery, a school, an infirmary and a place of temporary confinement." Although the greater part of the institutional relief provided by boards of guardians was in the workhouse, many boards of guardians for large towns also provided infirmaries for the reception of the sick, either adjacent to the workhouse or at some distance away.

In 1927, over 100 poor law statutes, the Act of Elizabeth being the earliest, were consolidated. The Poor Law Act, 1930, is a fresh version of the Act of 1927, the references to poor law unions being replaced by references to counties and county boroughs and references to the councils of these areas substituted for the references to boards of guardians. The numerous poor law orders governing institutions were also consolidated in the Public Assistance Order, 1930 (*a*). In this title, unless otherwise indicated, any reference to an article of an order should be read as a reference to this order, and any reference to a section of an Act, as referring to the Poor Law Act, 1930 (*b*). [567]

General Outline.—"Institutional relief" is defined by Art. 6 as relief given in any establishment, whether provided by the council or not, in which for the time being relief may lawfully be afforded. Institutional relief is largely afforded in a workhouse. By sect. 163, this includes any house in which poor persons are lodged and maintained, or any house or building purchased, erected, hired or used by a county or county borough council for the reception, employment, classification or relief of poor persons. When institutional relief is afforded in any building not belonging to the council, the consent of the M. of H. must be obtained unless the institutional relief, such as that in a special institution for blind or deaf and dumb persons, is covered by some special provision of the Act; see *e.g.* sect. 39. The expression "institution" is used in the order of 1930 to distinguish the establishment known as a "workhouse" in the Poor Law Act from a hospital, children's home or separate casual ward. By Art. 6 "hospital" means any poor law establishment recognised by the M. of H. as a separate establishment for the reception and maintenance of the sick or persons requiring maternity treatment, and a "children's home" means any home or homes, whether grouped or scattered, provided by the council, under the charge of a superintendent or matron, for the reception and maintenance of poor children, other than children suffering from disease of body or mind, and includes a separate school.

Poor law institutions are being reorganised by county and county borough councils, with the general object of superseding the "mixed" form of institution and of classifying institutions and their inmates, so that each individual may, where practicable, be sent to that institution which is best calculated to meet his special need. [568]

Control by Minister of Health.—By sect. 1 of the Act, the Minister is charged with the general direction and control of the administration of relief to the poor, and this control is exercised by making rules, orders and regulations under sect. 136 of the Act, such as the order of

(a) 12 Statutes 1058—1090.

(b) *Ibid.*, 968—1052.

1930. By sect. 10 (3) of the Act, he may define the duties to be performed by officers and he exercises this power in relation to certain officers, including institution masters, in the order of 1930. (See title PUBLIC ASSISTANCE INSTITUTION MASTER.) Another method of exercising control is by the appointment under sect. 9 of inspectors to visit the various institutions provided by public assistance authorities and keep the Minister informed of any irregularities in their administration.

The inspectors also report to the Minister on such matters as staffing, sanitary conveniences, classification, heating, and general matters, and in addition act in an advisory capacity where necessary.

Prior to the transfer of the functions of boards of guardians to the councils of counties and county boroughs made by the L.G.A., 1929, it was the practice for each poor law inspector to visit periodically the poor law institutions in his district, and, although routine inspections are not made to the same extent as formerly, the general inspection of institutions remains part of the inspector's duty.

The Minister has wide powers under sect. 21 to order the provision of workhouse accommodation, or additional accommodation, but it is believed that this power has not been exercised in recent years. Under sect. 22, the consent of the Minister must be obtained to any structural alterations involving an expenditure exceeding £500, but this is varied by Art. 14 of the order, so as to dispense with a consent where the expenditure does not exceed £1,000, or if it is proposed to defray the expenditure by way of loan. In addition to appointing inspectors, the Minister may under sect. 24 appoint a paid visitor if the council do not appoint a visiting committee whose duty it is to visit institutions. In practice, however, this power is obsolete, although it could be used in the case of a recalcitrant council. Where a paid visitor has been appointed by the Minister, the salary of such a visitor is to be paid by the council and is to be of such amount as may be fixed by the Minister.

The Minister has wide powers with regard to the classification of institutions, and under Art. 10 of the order may direct that a particular institution shall be allocated exclusively to some particular class of inmate. He may also give directions as to the classification of inmates within an institution under sect. 23 (1) of the Act. [569]

Local Authorities Responsible.—The administration of institutional relief is one of the functions of a county or county borough council, and under sect. 15 it is the duty of the council to set to work all persons who have no means to maintain themselves and use no ordinary and daily trade of life to get their living by, and to provide such relief as may be necessary for such persons as are poor and unable to work (a).

The council discharge their duties mainly in this respect through the public assistance committee (b). (See title PUBLIC ASSISTANCE COMMITTEE.)

In some counties the visitation, inspection and/or management of poor law institutions is undertaken by the guardians committee, if the public assistance committee so request (see title GUARDIANS COMMITTEE), but in others the guardians committees have no duties in this respect, and the direct supervision of the institution is undertaken by the public assistance committee or a special sub-committee of that body. In county boroughs, the work is undertaken by the public assistance committee or sub-committees of that committee. [570]

Management of Institutions.—The administration of each institution

(a) Sect. 15 corresponds with the Poor Relief Act, 1601, s. 1, but the provisions are now, probably, regarded as a general principle rather than as a legal obligation, as altered social conditions have necessitated a number of departures.

(b) But see Poor Law Act, 1929, s. 4 (1) (a); 12 Statutes 971.

is in the hands of a committee or sub-committee, known as the management committee, and they must, unless they undertake the duties themselves or a guardians committee is undertaking them at the request of the public assistance committee, appoint a sub-committee, called a house committee, to visit and inspect the institution and its inmates, and perform such duties as may be prescribed by the public assistance committee. In counties sometimes the guardians committee is appointed as the house committee. The guardians committee may also, at the request of the public assistance committee, undertake the duties of the management committee (see title GUARDIANS COMMITTEE).

It is the duty of the house committee to cause the institution to be inspected at least fortnightly by members of the committee (some at least of the inspections to be made without previous notice) and to consider any matters affecting the detailed administration of the institution either arising on the report of an officer or otherwise (Art. 72).

The management committee may also appoint a women's visiting sub-committee, including, with the consent of the public assistance committee, women who are not councillors (Art. 12). [571]

Any justice of the peace having jurisdiction in a place where a workhouse is situate may under sect. 25 of the Act visit and inspect a workhouse for the purpose of ascertaining whether the regulations made by the M. of H. and applicable to the institution are duly observed, and he may inspect the inmates and institution generally. This power is seldom, if ever, exercised. [572]

In addition to the power of classification by the M. of H. mentioned *ante*, on p. 307, the Minister may direct, under Art. 10 of the order, that a particular ward shall be used exclusively for the reception and maintenance of a specified class of inmate. Where a husband and wife, both being above the ages of sixty years, are in a workhouse, they must not be compelled to live apart from one another, and where a husband and wife are in a workhouse and either of them is infirm, sick or disabled by any injury, or above the age of sixty years, they may be permitted to live together (sect. 28). By Art. 34 of the order a separate sleeping apartment must be assigned to each such couple.

In certain places abroad, particularly in Holland and Scandinavia, special accommodation is provided for aged couples in public assistance institutions, whereby one or two aged people can occupy a single room, and may have certain of their possessions with them. Similar arrangements are in operation in some parts of England and Wales, and such an arrangement seems to be within the discretion of the council under Art. 30 of the order, subject, however, to the general control of the Minister. [573]

Sects. 71 to 73 of the Act are designed to prevent a person being required to attend a religious service conducted otherwise than in accordance with his own religious creed, and to prevent children being brought up in a religious faith different from that of the parents. A register must be kept shewing the religious creed of each inmate, or in the case of a child, the creed of the father, or if that cannot be ascertained the creed of the mother. Divine service must be performed in the institution on every Sunday, Good Friday and Christmas Day, unless the management committee otherwise direct, and prayers must be read every morning and evening (Art. 50). Every child in an institution must receive suitable religious instruction (Art. 49). The council must appoint a chaplain for every institution (Art. 143). [574]

Every child in the institution must receive education suited to his age and capacity (Art. 49). Some public assistance authorities have their own schools, but it is the more usual practice for children in a

poor law institution or children's home to attend the local elementary and secondary schools. [575]

Admission to Institution.—A person may be admitted to an institution by an order of the council signed by the clerk or other authorised officer or by an order signed by a relieving officer (Art. 25 (1)). The master may admit a person without an order in any case of sudden or urgent necessity, or in pursuance of any enactment, such as under sect. 20 of the Lunacy Act, 1890 (c), or where the person is transferred from another establishment or brought to the institution under an order of removal under sect. 95 of the Poor Law Act, 1930. If admission be refused by the master, he must report his action and the grounds for it in writing to the house committee at their next meeting (Art. 25 (3)). The house committee must interview, as far as practicable at each meeting, the inmates admitted to the institution since their last meeting (Art. 72 (d)). See also title PUBLIC ASSISTANCE INSTITUTION MASTER. [576]

Discharge and Leave of Absence.—By sect. 33 of the Act the council may direct that an inmate be detained in a workhouse, after giving notice to quit, for twenty-four hours if he has not previously discharged himself within one month before giving the notice, but if he has discharged himself once during the previous month, or more frequently, the period of detention is proportionately increased; if advantage is not taken by the management committee of this provision, an inmate may, under Art. 52 (1) of the order, discharge himself after giving reasonable notice to the master. Unless the management committee otherwise direct, all the family of an inmate must be discharged with him, unless a member of the family requires relief on account of sickness, accident, or bodily or mental infirmity, in which case he may be allowed to remain (Art. 52 (2)).

An inmate who is suffering from delirium tremens or from bodily disease of an infectious or contagious character, may be detained in the institution by a direction of the council under sect. 34 of the Act given on a certificate of the medical officer.

Temporary leave of absence may be allowed to an inmate by the master under Art. 53 of the order, subject to any regulations of the management committee. [577]

Dietaries.—Dietaries for the different classes of inmates must be prescribed by the council, after obtaining the written advice of the medical officer (Art. 35). This does not apply to inmates of the sick wards and mental wards, and infants, whose diet is prescribed under Art. 43 by the medical officer. Other inmates must be dieted in accordance with the approved dietary tables, but special dietaries may be prescribed for the infirm if the medical officer so advises, and children must be fed according to their appetites (Art. 35). Since the abolition of boards of guardians, a number of county councils have adopted standardised dietaries for the whole of the institutions in the county. The dietary tables should provide the maximum allowance for each class of inmate, but within this maximum an inmate should be fed according to his appetite. If for any special reason a meal not prescribed by the dietary tables is served to any inmate or class of inmate a record of the fact must be made by the master and a report made to the house committee at their next meeting (Art. 37). If the medical officer considers that the dietary of any class of inmate is inadequate or unsuitable he must report accordingly to the public assistance committee and give his reasons (Art. 38). Subject to any regulations

made by the council, the medical officer may direct that the dietary of an individual inmate shall be varied for a stated period not exceeding one month (Art. 39). On Christmas Day, or on some other day in the Christmas season, the dietary tables may be suspended and special directions may be given for the dieting of inmates (Art. 40).

Fermented or spirituous liquors cannot be allowed to any inmate, other than an inmate of the sick wards or mental wards, unless in pursuance of an order made by the management committee, after considering a special recommendation by the medical officer, on the ground that the allowance is necessary for the health of the inmate (Art. 41). The order must not cover a period of more than twenty-eight days (*ibid.*). The introduction into a workhouse of intoxicating liquor is dealt with in sects. 30, 31 of the Act. An inmate cannot be allowed to receive a gift of intoxicating liquor, but subject to this prohibition and to regulations made by the council or public assistance committee, inmates may receive gifts of liquor, food, provisions and tobacco (Art. 67 (3)). Regulations must also be made as to the allowance of tobacco, snuff or dried tea, whether to particular classes of inmates or to individuals (*ibid.*). [578]

Bathing and Searching of Inmates.—The medical officer must draw up a code of instructions for the bathing and cleansing of the inmates, and he must also enter on the record paper such directions as he may think necessary in regard to the bathing or cleansing of any particular inmate (Art. 45); and under Art. 67 (2) the council or the public assistance committee must make regulations with regard to the bathing and cleansing of children and adults, not being inmates of the sick wards, mental wards or nurseries. The council or the public assistance committee must also make regulations with regard to the searching of inmates and the prohibition and disposal of articles not proper to be brought into the institution (Art. 67 (2)). [579]

Employment and Discipline.—Subject to any recommendations given on grounds of health or physical or mental capacity by the medical officer, the inmates must be kept employed according to their capacity and ability and may not receive any remuneration for their labour (Art. 54). Only necessary work can be performed by an inmate on Sunday, Good Friday and Christmas Day (*ibid.*).

An inmate must not be employed in the sick wards, mental wards or nurseries, unless approved for the particular employment by the medical officer and acting under the immediate supervision of a paid officer, and no inmate can in any circumstances be employed in nursing a sick inmate (Art. 54). An inmate must not be employed on any work which in the opinion of the medical officer would be injurious to his health (*ibid.*).

Under Art. 67 (2) of the order, the council or the public assistance committee must make regulations with regard to the hours and places of meals and work, and the hours for inmates to rise and go to bed. Regulations must also be made with regard to gifts to inmates of liquor, food, provisions and tobacco (Art. 67 (3)).

The house committee must afford the inmates due opportunity of making complaints or applications, and must investigate complaints or applications so made and report to the management committee thereon (Art. 72 (c)). [580]

Under sect. 151 (1) of the Act, if an inmate commits any of the following offences he is to be deemed an idle and disorderly person within the meaning of sect. 3 of the Vagrancy Act, 1824 (d):

(1) absconding or escaping from, or leaving any casual ward before

he is entitled to be discharged therefrom; (2) refused to be removed from a casual ward to any workhouse or asylum; (3) absconding or escaping from, or leaving any workhouse or asylum, during the period for which he may be detained therein; (4) refusal or neglect to do work or observe the prescribed regulations; or (5) wilful destruction or injury to his own clothes or damaging any of the property of the council.

If an inmate commits any of these offences after having been previously convicted as an idle and disorderly person, he is by sect. 151 (2) to be deemed a rogue and vagabond within the meaning of sect. 4 of the Vagrancy Act, 1824 (e).

Any officer of a workhouse, or any constable, may without warrant, apprehend any such person who has absconded or escaped from or left the workhouse, and take him before a justice of the peace, and upon the order of the justice take him back to the workhouse (sect. 151 (3)).

If an inmate of a workhouse is guilty of drunkenness or other misbehaviour he is on summary conviction liable to imprisonment in the case of a first offence for a term not exceeding twenty-one days, and in the case of a second or subsequent offence for a term not exceeding forty-two days (sect. 153). Wilful disobedience of a lawful order of a workhouse official is not necessarily "misbehaviour" (f). An act of immorality committed by an inmate is evidence of "misbehaviour" (g).

Any person convicted of an assault upon a poor law officer in the execution of his duty, or upon any person acting in aid of such an officer, is liable on conviction on indictment to be imprisoned for a term not exceeding two years (sect. 154).

A number of minor offences, for which an inmate may be punished by the master as disorderly, are specified in Art. 55 of the order. The punishment awarded may under Art. 57 be the withholding, pending a further direction from the management committee, of a privilege, or by substituting for not longer than forty-eight hours, a ration of bread, potatoes or rice for the ordinary dinner.

If an inmate repeats within seven days any offence for which he may be deemed disorderly, or commits certain other specified offences, he is to be deemed refractory and may be ordered special punishment by the management committee (Arts. 56, 58). The master has an additional power for the punishment of an inmate who becomes refractory, and persists in using violence or creating a disturbance, acting indecently or obscenely, damaging property or endeavouring to incite other inmates to acts of insubordination (Art. 59).

There are various provisions in Arts. 60 to 65 as to the form of punishment which may or may not be given to certain classes of inmate. Records must be made by the master in the Offences and Punishments Book, which must be laid before the management committee and house committee at their meetings (Art. 66). [581]

Records.—Record papers must be kept in regard to each inmate of the sick wards or mental wards and each infant (Art. 42 (1)). Entries relating to the medical history, diets, treatment or the termination of the case must be made on the record by the proper medical officer attending, and every entry relating to diet or treatment must be initialled by him (Art. 42 (2)). Where there is an assistant medical officer all record papers in use must be examined and initialled by the

(e) 12 Statutes 915.

(f) *Mile End Union v. Sims*, [1905] 2 K. B. 200; 37 Digest 225, 180.

(g) *Holland v. Peacock*, [1912] 1 K. B. 154; 37 Digest 226, 181.

medical officer not less than once in three months (Art. 42 (3)). The record paper of every inmate who is discharged from medical care, or dies, must be examined and initialled by the medical officer as soon as practicable after the discharge or death, and must be delivered to the custody of the master (Art. 42 (4)). If an inmate is transferred to another establishment, the master must at the same time cause the record paper, or a copy of it, to be transmitted to that establishment (Art. 42 (5)). The record paper or, if the medical officer so directs, a bed-card must be affixed near the bed of each inmate of the sick wards, and every bed-card must be filled in from the record paper under the supervision of the matron or of such other officer as the management committee designate (Art. 42 (6)). [582]

Visitation of Inmates.—It is usual for the council or public assistance committee to prescribe the days on which inmates may be visited. Subject to any regulations of the management committee, an inmate may be visited with the permission of the master (Art. 69). Before making regulations with regard to visits to inmates of the sick wards, mental wards or nurseries, the committee must obtain the written advice of the medical officer (*ibid.*). The council may include, in regulations dealing with the visitation of the sick, provisions for securing that no unauthorised person enters the institution (Art. 70). The name of every visitor must be entered in a book kept for the purpose together with the times of his entry and departure (*ibid.*), and it is usual for the visitor to be asked the name of the patient whom he desires to visit. Some councils make regulations prescribing the number of visitors who may see one patient on any particular day. Parents of a child in the same institution may, unless the medical officer otherwise directs, see the child at least daily (Art. 82). An inmate may see at reasonable intervals any members of his family maintained in any establishment provided by the council (Art. 83). [583]

Burial of Inmates.—This is regulated by sect. 75 of the Act. If the deceased, before his admission to the institution, resided in a parish within the county or county borough, the burial is to take place in the burial ground of that parish, but if that burial ground has been closed and no other burial ground provided in its place, or if in consequence of the crowded state of that burial ground the council are of opinion that burials therein would be improper, the body may be buried in the burial ground of some neighbouring parish.

Where the deceased in his lifetime, or the wife, husband or next-of-kin of the deceased, has expressed a desire that the burial shall take place in any particular burial ground this may be arranged. On further points, see pp. 347, 348 of Vol. II. [584]

Hospitals.—For the purpose of the order of 1930, "hospital" is defined in Art. 6 as meaning any poor law establishment recognised by the Minister as a separate establishment for the reception and maintenance of the sick or persons requiring maternity treatment.

The chief difference in the mode of admission to a hospital as compared with an ordinary poor law institution is that under Art. 75 (1) an order of admission may be given by the M.O.H., either on a particular direction of the council or on a general direction of the council in a case in which the person, or any person or body on his behalf, is able and willing to repay the full cost of his maintenance and treatment. An order of admission may also be given by the clerk of the council, or other officer duly authorised to discharge the duties of clerk for this purpose (*h*), such as the public assistance officer, or may be given by a

(h) See definition of "clerk" in Art. 6 of the order.

relieving officer. In the latter case the order must be accompanied, except in a case of sudden or urgent necessity, by a certificate of a district medical officer or other qualified medical practitioner (Art. 75 (1)).

The medical superintendent may also admit a person to a hospital without an order in any case of sudden or urgent necessity, or in pursuance of any statute (Art. 75 (1)). Where the person is chargeable to the council and is transferred from another establishment on an order signed by the officer in charge of that establishment, it must be accompanied by a certificate of its medical officer (*ibid.*). The medical superintendent may also admit a person in pursuance of an agreement with another county or county borough council (*ibid.*).

A person is not to be admitted to the hospital upon an order dated more than six days before the day of its presentation at the hospital (Art. 75 (2)). Where the medical superintendent has admitted a patient without an order he must report in writing such admission and its grounds to the house committee at their next meeting (Art. 75 (3)).

Where the medical superintendent has refused to admit a person to the hospital he must report in writing his refusal and its grounds to the clerk, who must report the matter to the house committee at its next meeting (Art. 75 (4)).

As to the provision of infirmaries or hospitals under the Poor Law Act, 1930, see *ante*, pp. 25—27. As to the appropriation of a poor law establishment as a hospital for the purposes of the P.H.As. and other Acts, see *ante*, p. 27. [585]

Children's Homes.—In Art. 6 of the order of 1930, a "children's home" is defined as a home or homes, provided by the council, under the charge of a superintendent or matron, for the reception and maintenance of poor children, other than children suffering from disease of body or mind, and as including a separate school. A child may be admitted to a children's home on an order signed by the clerk of the council, or other officer authorised in that behalf (*i*), or by the relieving officer (Art. 78 (1)). In many areas it is customary for children to be admitted in the first instance to another establishment of the council, and transferred subsequently to the children's home. The child is then admitted on an order of the officer in charge of that establishment, and the medical officer must give a certificate to the effect that after due examination he finds the child to be free from any infectious or contagious disease (*ibid.*).

A child who has been sent out to employment from the children's home may be re-admitted without an order, but the admission must be reported to the house committee at their next meeting (Art. 78 (1)).

The decision as to the discharge of a child from the children's home is a matter for the management committee, but when a child's parent, who is an inmate of an institution or hospital, takes his discharge, arrangements must be made for the discharge of the child at the same time unless, on the recommendation of the management committee, the public assistance committee (where not itself the management committee) otherwise direct (Art. 80).

Dietary tables may be prescribed for different classes of children, or the maximum quantity of specified articles of food may be prescribed for issue each week in respect of each child (Art. 81 (1)). This clause also requires that children should be fed according to appetite, and in many homes it is customary for the details of the various meals to be

(i) See definition of "clerk" in Art. 6 of the order.

left to the discretion of the superintendent or matron subject to the approved maximum total not being exceeded. The dietary arrangements must be approved by the council, or a committee authorised in that behalf, but prior to taking action a written report must be received from the medical officer (Art. 81 (1)).

Arts. 82 to 90 of the order regulate the management, medical examination, religious and other training and the punishment of children in a children's home.

By Art. 27 of the order a child (other than an infant) must not be retained in a general institution for a period exceeding six weeks unless the child is an inmate of a sick ward, or is retained with the written approval of the medical officer given on medical grounds. This provision makes it obligatory on a council either to provide a special institution for children or to enter into suitable arrangements with another local authority or organisation. [586]

Schools.—The provisions as to schools reproduced in the Poor Law Act, 1930, are less important than they used to be, owing to the spread of the policy that poor law children should be educated in schools of the local education authority.

By sect. 53 of the Act the Minister may direct a county or county borough council to establish a separate school for the relief and management of the children to be received therein, and may make regulations for the government of the school and its inmates as if the school were a workhouse. Under sect. 54, a school supported wholly or partially by voluntary subscriptions may be approved by the Minister for the reception of persons sent there by a county or county borough council under their poor law powers. Some 240 establishments have been certified by the Minister for this purpose (*f*), and are used to a considerable extent by public assistance authorities for the care and maintenance of children requiring special forms of treatment or training. Sects. 55, 56 contain provisions as to the children who may be sent to certified schools, and as to their removal. The inspectors of the Minister are entitled to visit and inspect certified schools (sect. 57).

A child may under sect. 74 be ordered by the Minister to be transferred from a workhouse or separate school to a certified school of the religion to which it belongs.

Sects. 35 to 38 of the Act enable contracts to be made by the poor law authority with proprietors of boarding establishments for the reception of poor persons (including children) and provide for the management and inspection of such establishments. As respects children, these enactments are not acted upon, as they are superseded by the practice of certifying a school under sect. 54, and of sending children to a certified school under sect. 55.

An arrangement may be made under sect. 83, with the Minister's consent, for the reception in an establishment provided by the council of a county or county borough of children under sixteen sent there by the council of another county or county borough.

It has already been pointed out that a separate school is a "children's home" within the meaning of the order of 1930. Consequently Arts. 78 to 90, referred to *ante*, on pp. 313, 314, extend to a separate school. [587]

Relief in an Institution of another Authority.—The council of a county or county borough may, with the consent of the Minister, receive and maintain in a workhouse any poor person belonging to any other

(f) Annual Report of M. of H. for 1933-34, p. 241.

county or county borough upon such terms as may be agreed between the councils concerned (sect. 82). Any such person is deemed to be chargeable in the first instance to the receiving county or county borough and is to be treated in like manner as the other inmates of the institution, but his residence in the institution is, in all other respects, to be attended with the same legal consequences as if the institution were situated within the county or county borough from which he was received (*ibid.*). [588]

Subscriptions to Special Institutions.—The council may, under sect. 67, with the consent of the Minister, contribute by way of an annual subscription towards the support and maintenance of any public hospital or infirmary for the reception of sick or infirm persons; or any institution for blind or deaf and dumb persons or for persons suffering from any permanent or natural infirmity; or any other institution which appears to the council, with the approval of the Minister, to be calculated to render useful aid in the administration of the relief of the poor. No subscription can be approved by the Minister unless he is satisfied that persons receiving relief from the council have, or could have, assistance in the institution in the case of necessity (sect. 67).

Where a council pay a general subscription to the funds of such a voluntary institution, no special payment being made by the council for the maintenance of a person therein, apparently that person should not be deemed to be in receipt of relief. The provisions of sect. 67 do not, however, affect in any way the power of a council to send a poor person to any appropriate hospital or institution and pay for his maintenance therein in pursuance of their general duty to provide, under sect. 15, such relief as may be necessary to any poor person who is not able to work. A person so dealt with would be deemed to be in receipt of institutional relief. [589]

Idiots.—Notwithstanding the special provisions in the Mental Deficiency Acts, 1913 to 1927 (*k*), provisions with regard to idiots are to be found in sects. 40, 54, 58 of the Poor Law Act, 1930, being re-enactments of older statutory provisions. It would be more usual for action now to be taken under the Mental Deficiency Acts than under the Poor Law Act. Under sect. 40, the council may, with the consent of the Minister, send any idiot in receipt of relief to an establishment for the reception and relief of idiots; and sect. 54 allows a school for idiots to be certified by the Minister so as to allow suitable cases to be sent there. [590]

Deaf and Dumb and Blind Children.—Under sect. 58, the council may, with the approval of the Minister, send any deaf and dumb or blind child, who is an idiot or imbecile, or resident in an institution to which he has been sent from a workhouse by a council, or boarded out by the council, to any school fitted for the reception of such children.

Sect. 39 allows the council to provide for the reception, maintenance and instruction of any adult person in receipt of relief, who is blind or deaf and dumb, in any establishment for the purpose. This provision is also a re-enactment of an older statutory provision, and it is now more usual for action to be taken by councils with regard to blind persons under the Blind Persons Act, 1920 (*l*). See title BLIND PERSONS. [591]

London.—See title PUBLIC ASSISTANCE IN LONDON.

(k) 11 Statutes 160—201.
(l) 20 Statutes 593.

INSURANCE

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See also titles : ACCIDENTS ;
GUARANTEES OF OFFICERS ;
INSURANCE FUNDS OF LOCAL AUTHORITIES ;
WORKMEN'S COMPENSATION.

Insurable Risks.—The properties, activities and responsibilities of a local authority are attended by numerous inherent or external risks of loss or damage against which it is customary to seek protection by means of insurance. Among these risks are : fire, including damage by lightning, gas explosion, riot and civil commotion, aircraft, storm and tempest ; engineering, including plant and boilers, lifts, cranes, etc. ; motor vehicles of all descriptions ; workmen's compensation ; third party claims ; fidelity guarantees of employees ; cash in transit ; burglary ; and plate glass.

In addition to these general forms of insurance, certain special risks attach to special activities, *e.g.* the management of docks, ferries, racecourses and aerodromes, celebrations organised by a local authority, and forged transfers of stock. Special variations or extensions of general forms include loss of profits or receipts, the breakdown of plant and accidents to scholars. [592]

Methods of Insuring.—The management of a local authority's insurances demands considerable expert knowledge, not only of the authority's activities and properties, but also of the valuation and assessment of risks, of the law relating to insurance, and of the terms and conditions of insurance policies. Insurances are effected usually as the result of competitive quotations obtained from insurance offices of good repute, unless the local authority have their own insurance fund. See title INSURANCE FUNDS OF LOCAL AUTHORITIES.

Insurance offices which are members of the Tariff Association quote identical premiums ; non-tariff offices may quote lower premiums and give service equal to that of tariff offices ; but in any case the security and standing of the office should be beyond question. Where the treasurer of the local authority acts as agent (and usually this officer manages the insurances), agency commission will be receivable by him on behalf of the local authority. A further reduction of premium—which is usually assessed on an annual basis—may be secured by contracting that the insurance effected shall continue for a period of three or five years.

The day-to-day activities of a local authority—the acquisition and letting of properties, the engagement of officers, the purchase of plant and vehicles—constantly bring under review new subjects of insurance, while a periodical review (either annual, or on the renewal

of long-term contracts) of all insurances is desirable in order to ensure that the authority enjoy adequate cover. It is essential not only that all possible risks should be covered (except those expressly left uncovered, *e.g.* third party risks, which are in some cases met as they occur without insurance, that the whole circumstances be examined), but that the insured values should be sufficient, and no more than sufficient. This applies chiefly to fire insurance; for example, an upward revision of values is indicated since the suspension of the gold standard in the case of gold plate and similar articles; while a downward revision of the values of houses erected several years ago may be justified; for a fire insurance policy is essentially one of indemnity, in which the liability of the insurers is limited to the market value of the property at the time of loss, and it is obviously wasteful to pay premiums on values in excess of market values. In the insurance of freehold property, the value of the site should, of course, be excluded.

While the nominal obligation of the insurers, in most insurances, is to indemnify the local authority against a loss not exceeding the sum insured, and to bear legal costs incidental to the settlement of claims, in certain instances other services are rendered. In boiler insurance, regular inspection is carried out by the insurers, in satisfaction of the obligation imposed upon the owners by sect. 11 of the Factory and Workshop Act, 1901 (*a*), to cause a steam boiler to be examined every fourteen months, and where plant is under construction this will be supervised by the insurers' experts. The insurers will, of course, undertake the settlement of all claims against a local authority under third party and workmen's compensation insurances. In contracts for building and other works it is customary to provide that the contractor shall insure to the satisfaction of the local authority against third party and other risks which might attend the execution of the contract, *e.g.* fire, in the case of the erection of buildings. Frequently the contractor is required to insure with an office approved by the local authority, but in any case the policy should be submitted to the local authority for careful examination. [593]

Statutory Provisions.—The duty to insure is not one which is imposed generally upon a local authority by statute; it arises from that need to exercise care and prudence in the management of public affairs which attaches to a public body acting as a trustee of the rate-payers. Few references to insurance occur in local government legislation; one is the provision in sect. 85 (4) of the Road Traffic Act, 1930 (*b*), which exempts a local authority from the obligation to insure the use of motor vehicles against third party risks under that Act. Then sect. 119 (1) of L.G.A., 1933 (*c*), requires that a local authority, other than a parish council, shall, in the case of an officer who is likely to be entrusted with the custody or control of money, and may in the case of any other officer, take security for the faithful execution of his office and for duly accounting for money and property. This security is commonly obtained by taking out a fidelity guarantee policy, either covering specified officers for separate sums or covering all officers generally, *i.e.* a floating policy. See title GUARANTEES OF OFFICERS in Vol. VI.

One consequence of the Housing Act, 1935, is that local authorities

(a) 8 Statutes 524.

(b) 23 Statutes 636.

(c) 26 Statutes 369.

are obliged to consider the insurance against fire, etc., of houses provided under the Housing, Town Planning, etc., Act, 1919. Previously the insurable risks attaching to these houses had been borne by the Exchequer, and, being spread over the whole country, they could be carried without insurance. Under the 1935 Act the risks are distributed, each local authority being responsible for its own housing scheme, and the covering of the risk by insurance is probably a prudent course.

By sect. 1 (2) of the Forged Transfers Act, 1891 (*d*), a local authority may provide by insurance a fund to meet claims to compensation from a person who has sustained a loss arising from a forged transfer of the authority's stock or securities or a transfer under a forged power of attorney. [594]

London.—See p. 322, *post*.

(*d*) 2 Statutes 722.

INSURANCE FUNDS OF LOCAL AUTHORITIES

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*See also titles : GUARANTEES OF OFFICERS ;
INSURANCE.*

Introductory.—As pointed out in the title **INSURANCE**, there is no enactment imposing a general obligation upon a local authority to insure against the various risks which they may incur. In practice, local authorities do insure, although in some cases local authorities are their own insurers, *e.g.* in such matters as workmen's compensation and third party risks; claims are met as they arise, and in the long run it may be that the aggregate amount paid in settlement of claims is less than the insurance premiums would have totalled. A more satisfactory means of self-insurance is, however, secured by the setting up of an insurance fund, in which some or all of the insurable risks may be self-insured either wholly or in part. Local Act powers are necessary to authorise the establishment of an insurance fund, and many

local authorities have at various times since 1891 secured powers to set up such funds to deal with one or more classes of risk, although it was not until 1925 that a municipal corporation obtained power to set up a comprehensive fund for all ordinary risks. [595]

Case for Self-Insurance.—The idea of setting up an insurance fund springs from the fact that the larger local authorities, at any rate, pay to insurers by way of insurance premiums sums almost invariably exceeding the amount recovered from the insurers in settlement of claims, in many cases by a large margin. Superficially it would appear to be a profitable proposition for the local authority to undertake complete self-insurance by setting up an insurance fund, which would earn for the authority some of the profits which would otherwise accrue to insurance companies. But in fact, the question is not so simple as it seems.

The principle of insurance is founded on the theory of probabilities, and in order that insurance may be profitable there must be a "spread" of risks wide enough, in relation to the amounts insured, to allow that theory to operate. It is known, too, that even the insurance companies do not invariably carry the larger risks themselves; for it is their common practice to avoid retaining too large a holding on any particular risk, by effecting re-insurance for the excess. It will be seen that short of setting up a comprehensive insurance fund embracing the whole of the insurable risks, there are various ways in which such a fund may be employed to the local authority's advantage. But first the terms of a typical clause in a local Act giving the power may be considered. [596]

Model Clause in Local Acts (a).—The clause authorising the establishment by a local authority of an insurance fund to cover all risks authorises the council to establish a fund to be available for making good all losses, damages, costs and expenses to which they may be subjected in consequence of the happening of any event against which the council would ordinarily insure. In some cases the clause is drawn in a less general form by inserting in it a list of specified risks. The establishment of an insurance fund is not to prevent the council from insuring in offices of good repute against the whole or any part of all or any of such risks. Each year the council must pay into the fund certain sums. Sometimes the amount of these is left to the discretion of the council; sometimes there is an obligation upon the council to pay into the fund either (1) a sum not less than the aggregate amount of the premiums which would be payable if the council fully insured in insurance offices of good repute, or (2) if risks are partly insured in insurance offices, such sum as with the premiums paid, will equal the amount under head (1). The annual payments to the fund may be discontinued when the fund reaches a certain amount (varying with the size of the authority from £50,000 to £500,000 or, as in a few cases, such sum as the council may prescribe), but if the fund is at any time reduced below that amount, the payments must be resumed until the limit is again reached. Such payments to the fund are to be charged

(a) For precedents of clauses, see s. 41 of the Darlington Corp'n. Act, 1934 (24 & 25 Geo. 5, c. xxxviii.), s. 104 of the Torquay Corp'n. Act, 1934 (24 & 25 Geo. 5, c. lxxii.), and s. 145 of the Weston-super-Mare U.D.C. Act, 1934 (24 & 25 Geo. 5, c. xciv.). The Darlington Act is drawn in wider terms than the other two.

in the accounts to the appropriate departments or undertakings of the council which would be properly chargeable with the payment of premiums to insurance offices. The moneys of the fund must be invested in trustee securities (in some cases internal user is permitted), and the annual proceeds credited to the fund until it reaches the prescribed limit, when they are to be credited and apportioned equitably to the undertakings, departments or services liable to contribute to the fund. The council may, by arrangement with the managers of any non-provided public elementary school maintained by them, undertake the risk of accident to any teacher employed there. The fund must be applied in meeting losses, damages, costs or expenses sustained by the council in the order of the dates on which they become ascertained; if at any time the fund is insufficient to make good any claims, the council may, with the sanction of the M. of H., borrow the sum necessary to make up the deficiency, the interest and annual repayments being charged against such undertakings, departments or services as the Minister may prescribe, having regard to the risks through which such deficiency arose.

Although not part of the clause giving the power, it is usual for an undertaking to be given on behalf of the local authority during the passage of the Bill through Parliament, that no single risk of more than £50,000 will be undertaken by the fund. In connection with the insurance of the risk of accident to teachers in non-provided public elementary schools, it appears that where the clause is so drawn as to include teachers in schools, hostels and institutes which are not maintained by the local authority, the Board of Trade have intimated that the wording of the clause brings the local authority within the scope of sect. 1 of the Assurance Companies Act, 1909 (*b*), the effect of which is that if this risk is covered by the fund a deposit of £20,000 must be lodged, and annual returns submitted to the Board of Trade. [597]

Establishing the Fund.—The uncertain incidence of insurable risks suggests that great caution is needed at the inception of an insurance fund. Large single risks should not be undertaken until the fund has reached a substantial amount. Some types of risk are more suitable than others for inclusion in the fund, *e.g.* fire insurance, particularly of dwelling-houses provided by the local authority, is a more suitable risk to undertake than the risk of boiler explosion, which involves a need of expert inspection. It follows that in commencing to build up the fund limits should be set both to the sums insured and to the classes of risks undertaken. There are various methods of limiting the liability of the fund in the early years, principally by sharing the risks with insurance offices, *e.g.* (i.) by sharing the whole risk in definite proportions; (ii.) by undertaking the whole risk to a stated figure, and insuring the remainder of any single risk; (iii.) as in (ii.) but sharing the remainder as in (i.); (iv.) by selecting non-hazardous risks for insurance in the fund; or (v.) by insuring the first stated amount of any claim with an insurance office, the local authority only to contribute a proportion of any excess over that amount.

The most simple method is that described in (i.) above; for example, the local authority may decide to bear 10 per cent. of the whole risk, insuring the remaining 90 per cent. with an insurance office, and crediting the amount of premium saved to the insurance fund. The small

proportion undertaken by the fund may be increased in time, until eventually the whole risk is undertaken. Whatever method be adopted, the insurance fund must, of course, be credited with the proportionate amount of the annual premiums, and charged with the proportionate amount of any losses.

As an alternative to building up the insurance fund from zero, it would be financially sound to contribute agency commissions and any other available income to the fund, before actually undertaking any risks. It is doubtful whether it would be lawful to make a direct contribution from rates to the building up of a fund. [598]

Insurance Funds in Operation.—From a recent analysis of the insurance funds established by the councils of thirty large county boroughs (c), it appears that the classes of risk embraced by these funds are as follows:

	Cases.
Workmen's Compensation - - - - -	20
Fire - - - - -	15
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Fidelity Guarantee - - - - -	4
Cash in Transit - - - - -	2
Electrical Breakdown - - - - -	2
Plate Glass - - - - -	1
Vehicles - - - - -	1
Accidents to School Children - - - - -	1

Although these thirty boroughs include a number having power to set up comprehensive insurance funds, it is noticeable that risks such as boiler insurance have been avoided, the most popular risks undertaken being workmen's compensation, fire and third party. [599]

Workmen's Compensation.—It appears from the article referred to (cc) that the twenty councils who undertake this risk bear the whole risk in practically every case, fourteen of them having established their funds prior to 1912. The risk here is the legal liability in respect of claims arising under the common law, the Fatal Accidents Act, 1846 (d), the Employers' Liability Act, 1880 (e), and the Workmen's Compensation Act, 1925 (f). Although the liability at common law is unlimited, under the Acts of 1880 and 1925 it is of limited amount, and the risk appears to be a suitable risk to carry. In each of the twenty boroughs there was at March 31, 1931, a surplus balance in the fund, and in five boroughs the fund had reached the limit at which contributions may be discontinued. [600]

Fire.—The provision by local authorities of large numbers of houses of small value, commonly built in small blocks and in many cases on scattered estates, offers a very suitable risk for self-insurance. Certain other fire risks, e.g. town halls or electricity and gas works are not so suitable, and where these have been insured in the established insurance funds, some part of the risk has generally been re-insured in an insurance office. The financial position at March 31, 1931, of the fifteen boroughs who undertook fire risks, was relatively better than

(c) See "The Financial Circular," the official journal of the Institute of Municipal Treasurers and Accountants (Incorporated) for 1932, at p. 334, "Municipal Insurance Funds" by A. V. Vincent.

(cc) See footnote (c) above.

(d) 12 Statutes 325.

(e) 11 Statutes 499.

(f) *Ibid.*, 513.

that of the workmen's compensation funds, although, owing to the fact that eight of them were established after the war, the limit had been reached in two cases only. [601]

Third Party.—In the majority of the fourteen boroughs who undertake this insurance, the risk assumed by the fund is restricted to claims arising in respect of tramways and motor omnibus undertakings, and re-insurance has been effected in four cases. Each fund had a surplus balance at March 31, 1931. [602]

Other Risks.—In the case of the other risks covered by these funds, it appears to be the practice of the council to carry the whole risk, except that one council re-insured the risk of claims for electrical breakdown above £500 and another council re-insured loss of cash in transit above £100. [603]

Conclusion.—The experience of those local authorities which have been operating insurance funds for some years shows that for certain classes of risk it is advantageous to establish a fund. The need for the exercise of prudence in setting up the fund means, however, that some years may elapse before any substantial benefits accrue to the local authority, i.e., before the fund reaches its limit. But it is very doubtful whether a local authority would ever be justified in covering the whole of their risks by their own fund so as to be completely independent of insurance offices. [604]

London.—Sect. 60 of the L.C.C. (General Powers) Act, 1924 (g), authorises the council to establish an insurance fund against fire, lightning or explosion on any property belonging to or under the council's control. Yearly payments are to be made into the fund as the council may deem necessary, but not exceeding the premiums that would be payable for similar insurance in a public insurance office. The payments may be discontinued if the fund is in excess of reasonable requirements. Power is reserved to insure in public insurance offices. The yearly payments to the insurance fund are to be provided from the same sources of revenue as would be chargeable if the insurance were effected in a public office. The insurance fund is to be invested, but the council may transfer any interest and annual proceeds in excess of requirements to the general county fund. Deficiencies in the fund are to be made good and the council may borrow for this purpose. Insurance under the section is, to the extent of the amount of the insurance, to be deemed to satisfy any general covenant or obligation binding the council to insure.

This provision is amended by sect. 59 of the L.C.C. (General Powers) Act, 1929 (h), which requires the annual interest and proceeds of the fund to be carried to the county fund instead of the insurance fund, but the council are to pay yearly out of that account to the insurance fund such sum (not exceeding the total amount of such annual interest and proceeds) as they consider will be necessary to maintain the fund for reasonable requirements. The object of this provision is to make the taxed income of the Insurance Fund available as "set-off" against the council's liability to account for tax deductions made on payment of its annual interest, etc. See title INCOME TAX. [605]

(g) 11 Statutes 1370.

(h) *Ibid.*, 1425.

INTEREST

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See also titles : BORROWING ; FINANCE ;
CONSOLIDATED LOANS FUND ; TREASURY.

Interest on Loans.—A considerable part of the expenditure of a local authority consists of the interest payable on loans raised to finance authorised capital expenditure. Whatever method be adopted for raising the loan, the contract must provide for the payment of interest, usually half-yearly, calculated at a certain rate per cent. per annum on the amount of the loan. The interest on stock, housing bonds or corporation bonds, is payable at the same agreed rate throughout the period for which the security is issued, but mortgages frequently contain a "break" clause which provides for notice being given by borrower or lender, either on specified dates or at any time after a specified date, to vary the rate of interest by mutual agreement; failing agreement, repayment of the loan would be made.

At all times the methods and terms of borrowing by a local authority are largely determined by the ruling rates of interest, the conditions of the money market and the requirements of the local authority. When interest rates are stable the price at which money may be borrowed is not materially affected by the period of the loan, but when conditions indicate an upward movement long-term rates of interest are higher than short-term rates, and the choice of term will be determined by the requirements of the authority and the extent of the difference between the two rates at the time of borrowing. For example, if the rate for a loan of five years is $2\frac{1}{2}$ per cent., while the rate for a loan of twenty years is 3 per cent., it may be considered advisable to borrow for the longer period, in view of the possibility of a rise in interest rates. But if a higher level obtains, e.g. $4\frac{1}{2}$ per cent. for a five year loan, and 5 per cent. for a twenty year loan, it is possible that short period borrowing would prove the better policy. Generally, however, long-term borrowing, e.g. by issue of stock, whether to finance new expenditure or to fund existing loans, takes place when rates of interest are low, and short-term borrowing, e.g. by issue of short-term mortgages (where power exists) by the issue of bills or by bank overdraft, when the ruling rate of interest is relatively high. "Break clauses" in mortgages issued for long terms should be avoided where the initial rate of interest is low, and secured when a high rate prevails at the time of borrowing.

The rate of interest payable on loans is, subject to market con-

ditions and agreement with lenders, determined by the local authority, but on loans advanced by the Public Works Loan Commissioners out of the Local Loans Fund, the rate of interest is fixed from time to time by the Treasury (a). See also title PUBLIC WORKS LOANS ACTS.

Sufficient has been said to indicate the importance of adapting methods and terms of borrowing to suit the local authority's needs in relation to money market conditions, so as to secure that so far as possible interest payments are kept to a minimum.

Borrowing policy can never be static; it must be flexible enough to be varied according to changes in the available supply of loanable money, as reflected in the market rates of interest. The skilful management of a local authority's borrowings will yield considerable savings in expenditure by way of interest payments. [606]

Other Forms of Interest Payable.—Of these the chief is probably bank interest, payable either on temporary loans raised under the authority of sect. 215 of L.G.A., 1933 (b), or on overdrawn revenue account. Where more than one banking account is kept, it is customary for the balances to be pooled for interest purposes, interest being charged at an agreed rate on the net amount of any overdraft or allowed by the bank at a lower rate on any net credit balance in hand. Where any charge for bank interest or any loss of interest arises from failure through wilful neglect or wilful default to collect rates, precepts, or other revenues due to a local authority, the charge or loss may be the subject of surcharge by the district auditor (c).

Interest is payable, at the rate of 4 per cent., on deposits taken from consumers of electricity as security for the future payment of accounts (d). Where a local authority have power under a local Act to use the moneys of reserve funds, sinking funds, insurance and superannuation funds, etc., for their own purposes, either through the medium of a consolidated loans fund or otherwise in the exercise of statutory borrowing powers, it is usually provided that interest shall be paid to the lending fund at a rate corresponding to that which would have been payable on a loan raised from outside sources at the time of borrowing.

As an incident of the purchase of property, interest is usually payable upon the amount of purchase money deferred to the date of completion, and there are other instances where deferment of payment involves an interest charge, e.g. the settlement of a financial adjustment between two or more local authorities following an alteration of area. There is at least one case where interest is prescribed by statute as a penalty, viz. under sect. 9 of the R. & V. A., 1925 (e). Where payment of a precept by a rating authority is not made in accordance with the requirements of the precept, interest at the rate of 6 per cent. per annum from the due date of payment may be imposed by the precepting authority and enforced, if necessary, by the appointment of a receiver under sect. 13 of the Act. [607]

Methods of Paying and Charging Interest.—The methods of paying interest on corporation bonds and housing bonds are described in the

(a) Under s. 1 of the Public Works Loans Act, 1897; 12 Statutes 296.

(b) 26 Statutes 422. See title BANKERS' AND OTHER OVERDRAFTS.

(c) L.G.A., 1933, s. 228 (2); 26 Statutes 429.

(d) Electric Lighting (Clauses) Act, 1899, Schedule, s. 71; 7 Statutes 738.

(e) 14 Statutes 627.

titles BONDS and HOUSING BONDS. For interest on bills, see title BILLS, BORROWING BY. With minor variations, the methods outlined for the payment of interest on bonds and housing bonds are applicable to the payment of interest on mortgages and stock. Frequently the first payment of interest on a new issue of stock is made by means of a coupon attached to the scrip certificate which is issued to the stockholder in the first instance; at the due date the coupon may be detached and presented to the local authority's banker for payment. In certain circumstances, stock certificates to bearer may be issued, in which case coupons for the interest on the stock during its life must be attached to the certificates (f). Where a mortgage loan is raised on terms providing for repayment by a yearly or half-yearly annuity payment composed of principal and interest, the interest is distinguished from principal in the warrant issued, income tax being deducted from the interest portion of the payment. Interest on loans is always payable subject to deduction of income tax (see title INCOME TAX), subject to three exceptions, viz. (1) housing bonds, if the total holding does not exceed £100; (2) bills, which are issued at a discount and mature at par value, the difference representing gross interest; and (3) loans from the Public Works Loan Commissioners, on which interest must be paid gross (see title PUBLIC WORKS LOANS ACTS). Bank interest is of course paid gross. In connection with the payment of interest on mortgages, sect. 210 (1) of the L.G.A., 1933 (g), provides that any one of two or more persons who are jointly entitled to a mortgage may give an effectual receipt for interest, unless any other of them has given the local authority notice in writing to the contrary. Under sect. 211 of L.G.A., 1933 (h), in default of the payment of principal or interest due under a mortgage for a period of two months after demand in writing, the person entitled may, without prejudice to any other remedy, apply to the High Court for the appointment of a receiver; but no application may be considered unless the sum or sums due to the applicant or applicants amount to not less than £500. A corresponding provision in Art. 38 of the Stock Regulations of 1934 applies to interest on but not to the repayment of the principal of stock, and a creditor for less than £500 may apply. [608]

Interest payable on loans is chargeable in the accounts of the local authority to the particular account to which the loan expenditure related (i). Where the local authority operates a mortgage pool or a consolidated loans fund (see title CONSOLIDATED LOANS FUND), the net amount of interest payable in each year (*i.e.* after deducting interest receivable on investments, etc.) is usually apportioned at an average rate to the various "borrowing accounts," although provision may be made in a consolidated loans fund scheme for preferential rates to be charged to particular borrowing accounts, where this course may be justified by special circumstances.

Practice varies in regard to the payment of interest on consumers' deposits, which is chargeable to the account of the appropriate trading undertaking. In some instances the interest is paid, without deduction of income tax, annually as a separate transaction, while in others it is

(f) See the Local Authorities (Stock) Regulations, 1934 (S.R. & O., 1934, No. 619), Art. 32.

(g) 26 Statutes 419. See also Art. 30 of the Local Authorities (Stock) Regulations, 1934, as to interest on stock.

(h) 26 Statutes 419.

(i) L.G.A., 1933, s. 200; 26 Statutes 415.

deducted (annually or quarterly) from the amount of the consumer's account. Again, under another plan, it is allowed to accumulate until the deposit is repaid with interest to the consumer.

Interest is essentially a revenue charge, but there are a few rare instances where interest is allowed under local Act powers to be charged to capital, *e.g.* the interest on loans raised for the purpose of financing heavy capital expenditure such as waterworks, which will not be remunerative for some years; for a period of perhaps five years the interest is authorised to be met out of borrowed moneys. [609]

Interest Receivable.—As mentioned above, bank interest may accrue to a local authority on credit balances in hand. Other forms of interest receivable include interest on investments, *e.g.* of sinking funds, reserve funds, and other accounts. In the case of sinking fund investments, it is now provided by sect. 218 (3) of L.G.A., 1933 (*k*), that interest thereon shall form part of the county fund or general rate fund, as the case may be, instead of being paid direct to sinking fund account, but that the annual contribution to the sinking fund shall include a sum equal to the notional amount of interest which should otherwise have been credited to the sinking fund (see title BORROWING). Interest on private improvement expenses payable under sect. 213 or sect. 257 of the P.H.A., 1875 (*l*), or on the expenses of private street works payable under sects. 13, 14 of the Private Street Works Act, 1892 (*m*), is chargeable under sect. 77 of the P.H.A., 1925 (*n*), at the rate of 5 per cent. or such other rate as the M. of H. may from time to time by order fix.

Under the Housing Acts there are various instances where a local authority may charge interest, *e.g.* (1) on expenses incurred on the execution of repairs to an insanitary house under sect. 18 (5) of the Housing Act, 1930 (*o*), at such rate as the Minister may, with the approval of the Treasury from time to time by order fix; (2) on advances made to housing associations under sect. 70 of the Housing Act, 1925, or to persons for the purpose of increasing housing accommodation under sect. 92 of the same Act, or to assist the purchase of dwelling-houses under the Small Dwellings Acquisition Acts; in the last-mentioned case the rate is now under sect. 92 (2) of the Housing Act, 1935, a rate $\frac{1}{2}$ per cent. in excess of the rate of interest which, one month before the terms of the advance are settled, was the rate fixed by the Treasury under sect. 1 of the Public Works Loans Act, 1897 (*p*), in respect of loans advanced from the Local Loans Fund to local authorities for housing purposes. These latter charges are in effect interest on deferred instalments of purchase money, and other amounts may similarly be receivable in connection with sales of property by the local authority; a special example of this is found in the sale by hire-purchase or deferred payments of electricity and gas appliances.

Some local authorities make a practice of charging interest on overdue amounts in respect of trading charges, as a penalty for late payment. In the absence of special statutory authority, this practice could not be extended to local rates which are in arrear. [610]

London.—Reference should be made to the title BORROWING and to

(*k*) 26 Statutes 420.

(*m*) 9 Statutes 201, 202.

(*o*) 28 Statutes 410.

(*l*) 13 Statutes 715, 732.

(*n*) 13 Statutes 1151.

(*p*) 12 Statutes 296.

articles cross-referenced thereto in so far as the payment of interest on loans in London, generally, is involved. In the case of advances made by the L.C.C. to metropolitan boroughs in the raising of loans sanctioned, the rate of interest is at the discretion of the lending authority.

Temporary loans are raised by the L.C.C. under sect. 3 of the L.C.C. (Finance Consolidation) Act, 1912, and in regard to other metropolitan authorities the provisions of sect. 3 of the Local Authorities (Financial Provisions) Act, 1921 (*q*), remain unrepealed.

As regards London, sect. 27 of the County Rates Act, 1852 (*r*), provides for a 10 per cent. penalty in the case of amounts overdue under precept (not for a rate per cent. per annum). [611]

Methods of Paying and Charging Interest.—Action to be taken in event of default in payment of dividends on London County Stocks or interest on any other security issued by the L.C.C. is prescribed in the L.C.C. (Finance Consolidation) Act, 1912, sect. 18. [612]

Interest Receivable.—As regards interest received in respect of sinking fund investments, the L.C.C. is not subject to sect. 213 (*s*) of the L.G.A., 1933 (*s*), but has been permitted by H.M. Treasury to adopt the principle of that section in regard to services whose debt is redeemable on a cumulative sinking fund basis. [613]

(*q*) 11 Statutes 1344.

(*r*) 14 Statutes 524.

(*s*) 26 Statutes 420.

INTERIM DEVELOPMENT

See TOWN PLANNING SCHEMES.

INTERMENT

See BURIALS AND BURIAL GROUNDS ; CEMETERIES.

INTERNAL AUDIT

See AUDIT.

INTERPRETATION OF STATUTES

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See also titles : ACT OF PARLIAMENT ;
DEFINITIONS (STATUTORY).

For interpretation of Local Acts, see title PRIVATE ACTS.

For interpretation of Statutory Rules and Orders, see title STATUTORY RULES
AND ORDERS.

Introduction.—In this title it is proposed to deal with the principal rules that guide judges in deciding upon the proper interpretation to be placed upon the language of a statute.

The cardinal rule governing the construction of the language of an Act of Parliament is that it must be construed according to the intent of the Parliament which made it. The words of a statute when precise and unambiguous, expounded in their natural and ordinary sense, themselves best declare such intention. If ambiguous, the circumstances under which the words were used must be looked at. This rule has been stated as follows (a) :

"The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the law-giver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute."

Lord BLACKBURN enunciated this main principle thus (b) :

"In all cases the object is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that

(a) By the judges when called in to assist the House of Lords in the *Sussex Peerage Case* (1844), 11 Cl. & F. 85, p. 143 ; 42 Digest 650, 569.

(b) In *Wear River Commissioners v. Adamson* (1877), 2 App. Cas. 743 at p. 763 ; 42 Digest 610, 105.

intention is without inquiring further, and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view; for the meaning of words varies according to the circumstances with respect to which they were used. . . . In the cases of wills the testator is speaking of and concerning all his affairs; and therefore evidence is admissible to show all that he knew, and then the court has to say what is the intention indicated by the words when used with reference to these intrinsic facts, for the same words used in two wills may express one intention when used with reference to the state of one testator's affairs and family, and quite a different one when used with reference to the state of the other testator's affairs and family.

"In the case of a contract the two parties are speaking of certain things only, and therefore the admissible evidence is limited to those circumstances of and concerning which they used those words; see *Graves v. Legg* (c). In neither case does the court make a will or a contract such as it thinks the testator or the parties wished to make, but declares what the intention, indicated by the words used under such circumstances, really is.

"And this, as applied to the construction of statutes, is no new doctrine. As long ago as *Heydon's Case* (d), Lord COKE says that it was resolved 'that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: 1. What was the common law before the Act? 2. What was the mischief and effect for which the common law did not provide? 3. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth? And 4. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy.' But it is to be borne in mind that the office of the judges is not to legislate, but to declare the expressed intention of the legislature, even if that intention appears to the court injudicious; and I believe that it is not disputed that what Lord WENSLEYDALE used to call the golden rule is right, viz. that we are to take the whole statute together, and construe it altogether, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification, and to justify the court in putting on them some other signification, which, though less proper, is one which the court thinks the words will bear." [614]

In the rare cases in which the language of a statute is quite free from ambiguity the foregoing elementary rule will compel the court to read the statute according to its literal meaning, however inconvenient may be the result of doing so, and however legitimate may be the supposition that, had Parliament considered the matter more carefully, quite different language would have been used. When once the meaning is plain it is not the province of the court to scan its wisdom or its policy (e). But where, as in the majority of cases, the language is susceptible of a number of different meanings, the rule permits (and indeed obliges) the court to choose and adopt that meaning which it considers most nearly accords with the true intention of Parliament having regard to the circumstances as they existed at the time of the passing of the statute.

In attempting to ascertain the true intention of Parliament, the courts are in all cases prepared to make certain general assumptions which in many cases will have the effect of excluding a number of the constructions which upon the language of the statute are possible. One of these has been mentioned above, namely that Parliament does not intend to effect an inconvenient or absurd result. Another is that Parliament does not take away private rights without giving proper compensation. The court will not depart from any of these assumptions unless compelled to do so by the plain language of the statute.

In order, therefore, to follow the implications of the general principle

(c) (1854), 9 Ex. 709; 12 Digest 416, 3351.

(d) (1584), 3 Co. Rep. 7a; 42 Digest 614, 143.

(e) *Cooke v. Vogeler*, [1901] A. C. 102; 42 Digest 687, 1015, per Lord HALSBURY.

given above it is necessary to examine the way in which the court approaches the language of a statute, the extent to which the circumstances existing at the time of the passing of the statute may be taken into account, and the assumptions which the court will make as to the way in which Parliament will set to work in discharging their legislative functions. [615]

Statute must be Construed as a Whole.—It is an elementary rule that each provision in a statute must be so construed as to bring it into harmony as far as possible with the other provisions of the statute. Thus the Companies Act, 1862, by one section enacted that when a company was being wound up by the court any distress or execution put in force against the property of the company, after the commencement of the winding up, should be "void to all intents." Another section laid down that no "action or other proceeding" should after the commencement of the winding up be prosecuted without leave of the court. It was held (*f*) that the latter section included distresses and executions, and that the former section did not, therefore, render all distresses and executions void, but only those in respect of which no leave of the court had been obtained under the latter section. There are many reported cases in which the language of one section has been held to be controlled in this way by the language of another (*g*).

The general rule is that equal weight must be given to every part of a statute. It is not permissible to assume that Parliament intended that greater attention should be given to certain sections (*e.g.* the earlier ones) than to others, unless of course such an intention is made manifest by the language of the statute.

In local Acts, however, special clauses are often included for the protection of particular bodies or individuals and are regarded as special agreements, and not as part of the general scheme of legislation which the Legislature desires to express (*h*). And it has been said (*i*) to be the established rule, that general provisions in a local Act or in a general Clauses Act incorporated with a local Act, are not to control or repeal the special provisions of the local Act for the protection of particular property. [616]

As to the admissibility of referring to the title, preamble and marginal notes, see pp. 68—73 of Vol. I.

Reference to Other Statutes.—When sections of one Act of Parliament are introduced by reference into another Act, they must be read in the sense which they bore in the original Act from which they are taken, and consequently it is perfectly legitimate to refer to the rest of that Act in order to ascertain what the sections mean, though the rest of the Act is not incorporated with the new Act (*k*).

The later Act may either incorporate with it provisions of the earlier Act, or may merely declare that specified provisions of the earlier Act shall apply for the purposes of the later Act, with or without modification.

(*f*) *Re London Cotton Co.* (1866), 35 L. J. Ch. 425; 10 Digest 862, 5815.

(*g*) *Haufstaengl v. Empire Palace*, [1894] 2 Ch. 1; 13 Digest 210, 457; *Mercer v. Denne*, [1904] 2 Ch. 534; [1905] 2 Ch. 538; 17 Digest 6, 22.

(*h*) See *East London Rail. Co. v. Whitechurch* (1874), L. R. 7 H. L. 81; 42 Digest 681, 927.

(*i*) *Taylor v. Oldham Corpn.* (1876), 4 Ch. D. 395; 42 Digest 651, 590, per JESSEL, M.R., at p. 410.

(*k*) *Portsmouth Corpn. v. Smith* (1885), 10 App. Cas. 364; 42 Digest 666, 770.

Where the earlier Act is incorporated with a later Act its repeal by a third Act will not affect its incorporation with the second Act, unless of course the repeal is expressed sufficiently widely to repeal the earlier Act as part of the second Act (l).

The practice of applying provisions of earlier Acts, instead of setting out in the Bill the code desired, has given rise to difficult questions of interpretation and has frequently been criticised not only in the courts but in Parliament, but while the existing parliamentary practice on the consideration of Bills is maintained, it is unlikely that it will be abandoned. As on a hotly contested Bill amendments can be proposed to every word of the measure, the temptation of the Government to reduce the opportunities for discussion by applying some existing code of enactments, instead of setting out a new code in the Bill, is almost irresistible. One of the worst examples was sect. 75 of L.G.A., 1888 (m), which after applying certain Parts of the Municipal Corporations Act, 1882, to county councils and their chairmen, members, committees and officers, sought by no less than twenty-one provisos to modify the incorporation of the applied enactments. Fortunately most of this section has now been superseded and repealed by the L.G.A., 1933. [617]

Earlier Acts in *pari materia* may be considered where there is ambiguity. "Where there are different statutes in *pari materia*, though made at different times . . . and not referring to each other, they shall be taken and construed together as one system and as explanatory of one another" (n).

Where it is expressly provided that two Acts are to be read together, every part of each Act must be read as if all parts of both were contained in a single Act. Only in the case of a manifest discrepancy will the provisions of the later of the two be held to have modified those of the earlier (o).

The language of earlier Acts in *pari materia* may occasionally be considered even when they have been repealed. But caution must be used in adopting this principle. It has been said (p) "to be an extremely hazardous proceeding to refer to provisions which have been absolutely repealed, in order to ascertain what the Legislature meant to enact in their room and stead. There may possibly be occasions on which such a reference would be legitimate." It would seem that the court will only resort to repealed legislation in cases where it is impossible or difficult otherwise to determine the true intention of Parliament. [618]

Words of a Statute must be construed in Light of the Subject-matter as to which they are used.—A statute is not to be construed according to the mere ordinary general meaning of the words used in it, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there be something which obliges the court to read them in a sense which is

(l) See Vol. I., p. 74.

(m) 10 Statutes 746.

(n) *R. v. Lordale* (1758), 1 Burr. 445 (42 Digest 663, 731), per Lord Mansfield, at p. 449, followed in *Goldsmiths' Co. v. Wyatt*, [1907] 1 K. B. 95; 42 Digest 685, 592. But see as to the necessity of an ambiguity before such a reference can be made; *R. v. Titterton*, [1895] 2 Q. B. 61; 42 Digest 663, 725.

(o) *Hart v. Hudson Bros.*, [1928] 2 K. B. 629; 44 Digest 133, 26.

(p) *Bradlaugh v. Clarke* (1883), 8 App. Cas. 354 (42 Digest 638, 412), per Lord Watson at p. 379.

not their ordinary sense in the English language as so applied (*g*). If the Act is directed to dealing with matters affecting everyone in general, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business or transaction, and words are used which everybody conversant with that trade, business or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words (*r*). Thus it has been held (*s*) that the words "to beg alms" in sect. 3 of the Vagrancy Act, 1824 (*t*), do not include a *bond fide* collection in the streets for charitable purposes, although the strict dictionary definition would cover this purpose. This principle of construction has been applied in a large number of cases (*u*). [619]

Circumstances as they Existed at the Time of the Passing of the Statute should be Considered.—It has been already mentioned that the language of a statute must be construed in the light of the subject-matter in respect of which it is used. In order to understand properly the scope and nature of the subject-matter, the court will have regard to all the external facts and considerations which necessarily must have been present to the mind of the Legislature when the enactment in question was passed. So the Slave Trade Act, 1824, was held (*x*) to apply to acts done by British subjects in a part of Africa outside the British dominions, on the ground that the Legislature must have intended to prevent dealings in slaves on any part of the African coast.

On the other hand, it is not permissible to have regard to the expressed intention of the individual legislators or the persons who were responsible for framing either the Act or amendments of the Bill made during its passage through Parliament. Accordingly, the reports of parliamentary debates and the recommendations of commissions and committees ought not to be looked at (*a*). It has been said (*b*) that a difference between the language of an Act and the declared intention of the individuals who framed it should give rise to the inference that the difference was deliberately made. And a similar inference should, it is thought, be drawn when there is a discrepancy between the language of an Act and the recommendation of a committee or commission whose report was before Parliament when the Act was passed.

A statute will only be construed in the light of an extraneous fact when it is clear that a knowledge of that fact must be imputed to the Legislature. Thus the proper construction of the word "daily," as applied to gas testing, in a statute passed in 1880 came up for consideration, and it was argued that a knowledge of the previous practice under that and earlier Acts of not testing on Sundays should be imputed

(*g*) See *Lion Mutual Marine Insurance Association v. Tucker* (1883), 12 Q. B. D. 176, at p. 186; 42 Digest 644, 494.

(*r*) See *Uwinn v. Hanson*, [1891] 2 Q. B. 115; 42 Digest 631, 337.

(*s*) *Mathers v. Penfold*, [1915] 1 K. B. 514; 37 Digest 361, 1629.

(*t*) 12 Statutes 913.

(*u*) See the cases collected in Maxwell, "Interpretation of Statutes" (7th ed.), Chapter II., pp. 46 *et seq.*

(*x*) *R. v. Zulueta* (1848), 1 Car. & K. 215; 15 Digest 727, 7876.

(*a*) See *Assam Railways and Trading Co. v. Commissioners of Inland Revenue*, [1905] A. C. 445, at pp. 467-8; Digest Supp.; where most of the earlier authorities are referred to.

(*b*) See *Salkeld v. Johnson* (1840), 2 C. B. 749, per TINDAL, C. J., at p. 757.

to Parliament, and that the word "daily" used in the light of that knowledge must have been meant as equivalent to "every weekday." But the court decided that the word must be construed literally as including Sundays (*c*). Dealing with the suggestion that a knowledge must be imputed to Parliament of the practice which had grown up of neglecting the statutory duty to test on a Sunday, the court while admitting that it might be reasonable to impute to the Legislature knowledge of the practice of a public department in respect of inhabited house duty (*d*), declined to hold that the Legislature must have had within their knowledge the practice of the gas examiners in holding no tests upon Sundays. [620]

Statutes must be Construed so as to Achieve Full Intention of Parliament.—Once the general object that Parliament had in mind when passing the statute has been ascertained by a consideration of its language as a whole, in the light of such of the surrounding circumstances as may properly be regarded, it is the duty of the court to put such a construction upon its individual provisions as will best suppress the mischief at which it was aimed and advance the remedy which it was meant to provide (*e*). This so-called principle of benevolent construction is of great importance in the proper construction of statutes by which powers are conferred upon a local authority. When the object of Parliament in conferring the power is ascertained, the language of the provision by which the power is defined will, as far as possible, be construed so that the power may be exercised in such a way as to achieve the object. Thus the Common Lodging Houses Act, 1853 (*f*), prohibited the keeping of a common lodging house unless it had been inspected, approved and registered. It was held (*g*) that the object of the Act was to safeguard the health of poor people using such houses by securing that the houses should be maintained in a clean and sanitary condition; and that houses run by charity must therefore be regarded as within the ambit of the Act as well as those run for gain.

Closely connected with the principle of benevolent construction is the rule that the court will as far as possible so construe an Act as to defeat attempts to avoid in a circuitous manner the obligations that the Act imposes. On the other hand, the court will not strain the language of an Act to cover a case merely because somebody has attempted to put himself outside its scope and has succeeded in doing so. And this is so, even where the court is convinced that had Parliament contemplated the case in question the language of the statute would have been drafted to cover it. [621]

Presumption against any Alteration in the Law apart from the Specific Object of the Statute.—To ascertain the scope and intention of an Act, the court will examine the consequences that will flow from the adoption of one or other of the different constructions of which its language is susceptible. Moreover the court will make certain general assumptions that the Legislature has not intended to bring about certain results. Perhaps the most important of these assumptions is that the Legislature must have intended to avoid any alteration in fundamental principles of law, further than the Act requires in express

(*e*) *L.C.C. v. South Metropolitan Gas Co.*, [1904] 1 Ch. 76; 42 Digest 667, 780.

(*d*) See *Yacobs v. Noakes* (1880), 6 Q. B. D. 530; 42 Digest 643, 475.

(*f*) *Heydon's Case* (1564), 3 Co. Rep. 7a; 42 Digest 614, 143.

(*g*) 11 Statutes 885.

(*g*) *Logsdon v. Booth*, [1900] 1 Q. B. 401; 38 Digest 210, 449.

terms or by necessary implication. For instance, it is a principle of law that a man once acquitted is not to be thereafter proceeded against with respect to the same matter; also that an appeal against a judicial decision is never given except by statute, and a construction which overrides these principles will not be arrived at if the words of a statute are capable of some other meaning (*h*). Another instance is that the court will not assume that the Legislature intends to destroy the jurisdiction of a superior court in the absence of a clear expression or necessary implication to this effect (*i*).

Again, *mens rea* (or a guilty mind) being ordinarily an essential element of crime, it is, in accordance with the principle under discussion, implied that all statutes, no matter how unqualified may be their language, require the proof of this element, unless a contrary intention be expressed or implied (*k*). [622]

Presumption against Injustice, Inconvenience, Unreasonableness and Absurdity.—Where there are two possible constructions of a statute and one of them will do injustice and the other will, while avoiding that injustice, keep within the purpose for which the statute was passed, the court will adopt the second of those constructions; and the same principle applies to alternative constructions, one of which will lead to inconvenience, unreasonableness or absurdity (*l*). It must not be supposed that this rule extends to injustice which may ensue to individuals in exceptional cases. The application of it in such cases leads to difficulties, because if the law is warped to soften its severity in a particular case, it is unsuited for general application, and no one knows with certainty how to proceed upon it (*m*). [623]

Presumption against Retrospective Operation.—This rule, which may be regarded as an aspect of one or other or both of the last two rules may be stated as follows: in the absence of an expression of intention to the contrary, statutes operate prospectively and not retrospectively, except where they make alterations in the forms of procedure or alterations in matters of evidence. It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction; and the same rule involves another and subordinate rule to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary (*n*). So in *Reid v. Reid* (*o*) the question was raised as to whether sect. 1 (4) of the Married Women's Property Act, 1882 (*p*), operated upon property which fell into the possession of a married woman after the passing of the Act, but to which she had acquired a title before, so as to make it her separate property. It was argued that this must be so, inasmuch as the Act in general, and the section in particular, had a retrospective operation. But it was held, in spite of this, that the language of the sub-section

(*h*) *R. v. London J.J.* (1890), 25 Q. B. D. 357; 26 Digest 460, 1760.

(*i*) *Jacobs v. Brett* (1875), L. R. 20 Eq. 1; 34 Digest 531, 50.

(*k*) See *Sherras v. De Rutzen*, [1895] 1 Q. B. 918; 14 Digest 38, 80.

(*l*) *R. v. City of London Court Judge*, [1892] 1 Q. B. 273; 1 Digest 245, 1725.

(*m*) See *Ford v. Kettle* (1882), 9 Q. B. D. 139; 7 Digest 89, 617.

(*n*) See *Lauri v. Renad*, [1892] 3 Ch. 402, per LANDLEY, L.J., at p. 421; 42 Digest 606, 1116.

(*o*) (1886), 81 Ch. D. 402; 42 Digest 693, 1084.

(*p*) 45 & 46 Vict. c. 75. Repealed by the Married Women's Property Act, 1893.

was not free from ambiguity; and that in such circumstances its retrospective effect ought not to be extended so as to make it operate in the way suggested. It was said (g) :

"Now the particular rule of construction . . . which is valuable only when the words of an Act of Parliament are not plain, is . . . that except in special cases the new law ought to be construed so as to interfere as little as possible with vested rights. It seems . . . that even in construing an Act which is to a certain extent retrospective, and in construing a section which is to a certain extent retrospective, we ought nevertheless to bear in mind that maxim as applicable whenever we reach the line at which the words of the section cease to be plain" (r).

The presumption against retrospective operation does not, it seems, apply in the case of statutes which make alterations merely in the practice and procedure of the courts. Indeed in such cases the better opinion is that the presumption is the other way, and that procedural alterations must be deemed to have retrospective operation unless the language of the statute in question clearly indicates the contrary (s). [524]

Statutes which Invade Rights and Impose Burdens.—Closely related to the general principles mentioned above that statutes will not be construed so as to work an injustice, or to interfere with the *status quo* more than is necessary to achieve the manifest intention of Parliament, is the rule that they should be so read as not to invade vested rights in property.

So, in considering the provision in sect. 149 of P.H.A., 1875 (t), that certain streets shall "vest" in the urban authority, it has been held (u) that this does not operate to vest in the authority the fee simple of the soil upon which the street is constructed, but only the surface and so much of the soil below the surface as is necessary for the purpose of enabling the authority adequately to perform their duties of repairing and maintaining, and only for so long as the street remains a street (a).

At first sight this principle appears to conflict with the principle of benevolent construction mentioned above, but the conflict is more apparent than real. It seems that once the specific object of the Act is made clear, the former principle makes it necessary to extend the language so that the object is fully achieved, while the latter calls for a restriction of the language so that the statute does not have results which are not involved in the attainment of the object. So in *Coverdale's Case* already mentioned, the former principle no doubt prevented the court from holding that nothing but the surface of the street vested in the authority, while an application of the latter principle preserved the rights of owners of the subsoil except so far as it was necessary to displace them to enable the authority to perform their functions.

This principle is particularly so where the statute contains no express provision allowing the owner to obtain compensation in respect of the invasion. Indeed, it is a well-established rule (b) that the court will

(g) At p. 409.

(r) See, further, *Gardner v. Lucas* (1878), 3 App. Cas. 582; 42 Digest 607, 1139; *Smith v. Callander*, [1901] A. C. 297; 42 Digest 606, 1120; *West v. Gayne*, [1911] 2 Ch. 15; 42 Digest 606, 1122.

(s) See *Gardner v. Lucas*, *supra*, at p. 603; *Kimbray v. Draper* (1868), L. R. 3 Q. B. 160; 42 Digest 702, 1136.

(t) 18 Statutes 685.

(u) *Coverdale v. Charlton* (1878), 4 Q. B. D. 104; 26 Digest 829, 616.

(a) *Rolls v. St. George's Southwark* (1880), 14 Ch. Div. 785; 26 Digest 480, 1986.

(b) See *A.-G. v. Horner* (1884), 14 Q. B. D. 245; 42 Digest 748, 1679; *Colonial Sugar Refining Co. v. Melbourne Harbour Trust Commissioners*, [1927] A. C. 343; 42 Digest 705, 1221.

not construe an Act as taking away rights without compensation unless obliged to do so by clear unambiguous words or by necessary implication (c). Where an Act contains two sets of provisions, one permitting certain infringements of property rights and the other giving compensation in respect of infringements, the court will if possible construe the former as permitting infringement only in those cases for which compensation is provided by the latter; and the latter as covering all cases in which infringement is permitted by the former.

Agreeably with this principle, it has been held in a number of cases that a bye-law, made under statutory powers and enforceable by penalties, must be reasonable, *intra vires* and not repugnant to the statute under which it is made or to the general law (d). But bye-laws made by a local authority for the good rule and government of their area receive a benevolent construction, and the court will assume that the authority are good judges of what is necessary and advisable (d). There is "a well recognised principle that when there is a competent authority to which . . . Parliament entrusts the power of making regulations, it is for that authority to decide what regulations are necessary, and any regulations which they decide to make should be supported unless they are manifestly unreasonable or unfair (e)".

[625]

Another example of the application of the principle under discussion is afforded by the rule that penal and taxing statutes are to be construed strictly. As to such statutes it has been said (f): "If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections" (g).

Similarly local and personal and private Acts investing private persons or bodies, for their own benefit, with powers of interference with private rights and private interests always receive a strict construction (h). [626]

Imperative or Directory Statutes.—A statute often contains provisions requiring that a particular thing shall be done in a prescribed manner, or within a prescribed time, or after something else has been done

(c) As, for example, in the case of s. 2 of the Housing Act, 1930 (23 Statutes 398), which gives power to make clearance orders.

(d) *Kruse v. Johnson*, [1898] 2 Q. B. 91; 13 Digest 326, 631; *White v. Morley*, [1899] 2 Q. B. 34; 13 Digest 328, 652; *Gentel v. Rapps*, [1902] 1 K. B. 160; 13 Digest 328, 653.

(e) *L.C.C. v. Bermondsey Bioscope Co.*, [1911] 1 K. B. 445; 42 Digest 921, 164; *Stiles v. Galinski*, [1904] 1 K. B. 615; 38 Digest 164, 100. It is suggested that the effect of this apparent conflict between the so-called "benevolent" and the so-called "strict" principles in connection with the interpretation of bye-laws is as follows. When the question as to whether a bye-law is *ultra vires* or not is raised, the court will in accordance with the former principle hold in favour of its validity unless it is clearly unfair or unreasonable. On the other hand, where the question is whether the bye-law applies to the facts of a particular case the court will be guided by the latter principle. This is especially so when the bye-law is enforceable by the exaction of penalties.

(f) By Lord Esher, M.R., in *Tuck & Sons v. Priestler* (1887), 19 Q. B. D. 629, at p. 638; 42 Digest 729, 1516.

(g) See also *Partington v. A.-G.* (1869), L. R. 4 H. L. 100; 42 Digest 736, 1603; *Pryce v. Monmouthshire Canal and Rail. Cos.* (1879), 4 App. Cas. 197; 42 Digest 787, 1605.

(h) See *Seales v. Pickering* (1828), 4 Bing. 448; 42 Digest 707, 1243; *Stourbridge Canal Co. v. Wheeley* (1831), 2 B. & Ad. 792; 42 Digest 738, 1621.

(e.g. the service of a notice). This is especially the case with statutes that confer powers or impose duties upon a local authority. The problem then arises whether the provision with regard to the manner or time or the fulfilment of the condition precedent is "imperative" or "directory." In the former case the thing required to be done cannot be validly done at all except after a strict compliance with all the prescribed requirements, and any attempt to do it in any other way will be void. On the other hand, in the latter case a failure to comply with one of the requirements will not invalidate the action taken (i).

It has been said that no general rule can be formulated for deciding the question whether a provision of this kind is imperative or directory. Generally speaking when an Act confers powers, privileges or immunities, provisions regulating the exercise of the power or the enjoyment of the privilege or immunity are regarded as imperative. In dealing with powers conferred upon a local authority, the court has regard to the purpose for which the regulation with regard to the exercise of the power has been framed. If the object is to protect the interests of the persons who will be adversely affected by the exercise of the power (e.g. to give them an opportunity of objecting or appealing), the regulation is regarded as imperative. In other cases, where, for example, the object is merely to secure uniformity of practice, the regulation will generally be held to be directory (k). [627]

(i) Thus in making a clearance order under s. 2 of the Housing Act, 1930 (23 Statutes 398), a local authority must fulfil the requirements in the First Schedule with regard to the form of the order, the giving of notices, etc. It is suggested that these requirements are directory only; for s. 11 (3) of the Act (23 Statutes 405) clearly draws a distinction between a case in which some requirement of the Act has not been complied with and the applicant's interests have been prejudiced, and one in which his interests have not been prejudiced by the defect. If it were not for this section, it could be argued with considerable force that a failure to observe a requirement rendered the order void.

(k) See the distinction drawn in *Caldow v. Pixell* (1877), 2 C. P. D. 502; 42 Digest 712, 1296.

INTOXICATING LIQUORS

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Basis and Salient Features of Present System.—The basis of the system of control of the sale of intoxicants is the discretionary power of the justices acting in petty sessional divisions commonly called for

this purpose "licensing districts." The main features of the system may be summarised thus: (1) the general prohibition of the retail sale of intoxicating liquor without a justices' licence authorising the holding of the appropriate excise licence; and the prohibition of any retail sale at any place not authorised by the licence; (2) the discretionary powers of the licensing justices over the grant, renewal, removal, transfer of licences, and in regard to structural conditions in licensed premises; (3) the extinction of certain classes of on-licences on payment of compensation; (4) the provision of penalties in respect of illegal transactions in intoxicants and the improper conduct of licensed premises, and other penal provisions (*e.g.* in regard to drunkenness) imposed in the interests of good order and public welfare; (5) the general limitation, subject to variation at the discretion of licensing justices of the times during which intoxicants may be sold or supplied and consumed in licensed premises and clubs. [628]

Kinds of Licence.—The following are the kinds of licence for which the grant of the justices' licence at the general annual licensing meeting is necessary:

(1) *Spirits on-licence* (known as the "publican's licence").—Authorises sale by retail of spirits (*a*), beer, cider, wine and sweets for consumption either on or off the premises.

(2) *Beer on-licence*.—Authorises sale by retail of beer and cider for consumption either on or off the premises.

(3) *Cider on-licence*.—Authorises sale by retail of cider for consumption either on or off the premises.

(4) *Wine on-licence*.—Authorises sale by retail of wine for consumption either on or off the premises.

(5) *Spirits off-licence*.—Authorises sale by retail of spirits for consumption off the premises, but not (*a*) in open vessels, or (*b*) in any quantity less than one reputed quart bottle (*c*).

(6) *Beer off-licence*.—Authorises sale by retail of beer and cider for consumption off the premises.

(7) *Cider off-licence*.—Authorises sale by retail of cider for consumption off the premises.

(8) *Wine off-licence*.—Authorises sale by retail of wine and sweets for consumption off the premises, but not (*a*) in open vessels or (*b*) in any quantity less than one pint bottles. [629]

General Annual Licensing Meeting.—Licences granted by licensing justices are granted at a special session called the general annual licensing meeting. This meeting is held in every petty sessional division of a county, and in every borough having a separate commission of the peace within the first fourteen days of February in every year. There

(a) The existing law does not recognise an on-retail licence confined to spirits alone. *Customs and Excise Commissioners v. Curtis*, [1914] 2 K. B. 335; 30 Digest 35, 279.

(b) A justices' licence is not required for an excise licence taken out by a spirits dealer or wine dealer for sale by retail of spirits and wines for consumption off the premises, where the premises are exclusively used for the sale of intoxicating liquors, or of intoxicating liquors and mineral waters or other non-intoxicating drinks, and have no internal communication with the premises of any person who is carrying on any other trade or business. Licensing (Consolidation) Act, 1910, s. 111 (1); 9 Statutes 1043.

(c) S. 22 of Finance Act, 1933 (26 Statutes 673), authorises sale of spirits in reputed pint (or half) bottles, provided such licence is granted under authority of a justices' licence.

must also be held an adjourned meeting, held not less than five days after the annual meeting, and within one month from the date of the annual meeting. Strictly speaking, this meeting is probably not a "court" at all, so that evidence need not be on oath, except in the cases of applications for renewals of licences (*d*). The meeting must be held in public; and the justices must act in a judicial spirit, employing their own knowledge as to the needs of the neighbourhood and suitability of premises to be licensed. All decisions are determined by a majority of the justices present. [630]

Grant of New Licences.—These are granted at the general annual licensing meeting (*e*), and the justices have an absolute discretion to grant or refuse an application for a new on- or off-licence, and their decision is final. No notice of intended opposition is required (*f*). Evidence need not be on oath, though in practice the witnesses are usually sworn. [631]

Confirmation of New Licences.—No new licence granted by the justices is valid unless confirmed by the confirming authority (*g*). An application for confirmation cannot be heard until at least twenty-one days have expired since the date of the grant of the licence, and only those persons may oppose the confirmation of a new licence who opposed the application before the licensing justices (*h*). The justices may attach conditions to the grant of new on-licences in regard to payments to be made and the tenure of the licence; and they are bound to attach conditions in the grant of such licences with regard to the payment of monopoly value (*i*). The applicant for confirmation must attend in person, unless he shows good cause for his absence. All evidence should be on oath (*k*). The duties of the authority are not merely ministerial; they have a discretion to confirm or refuse the grant of a new licence, although no objection is made to the grant, and they should consider each case on its merits (*l*). There is no appeal from their decision. [632]

Term Licences.—A new on-licence may be granted either as an "annual" licence, which requires to be renewed at the end of each licensing year, or as a "term" licence, limited to some definite period not exceeding seven years (*m*). When a term licence expires, application must be made for the grant of a new licence, against the refusal of which (as stated above) there is no appeal. [633]

Renewal of Licences.—Consideration of renewal of licences is taken at the general annual licensing meeting (*n*). The applicant need not appear in person, unless specially required to do so (*n*). But he should either (1) send an authorised messenger, or (2) apply by letter, or the justices would probably not renew and the licence would drop. The person entitled to a renewal is the person in occupation of the premises

(*d*) Act of 1910, s. 16 (6); 9 Statutes 997.

(*e*) *Ibid.*, s. 12 (1); 9 Statutes 993.

(*f*) *Boulter v. Kent JJ.*, [1897] A. C. 556; 30 Digest 69, 548.

(*g*) *I.e.* Quarter Sessions (Act of 1910, s. 12 (2); 9 Statutes 993).

(*h*) *Ibid.*, s. 13.

(*i*) *Ibid.*, s. 14; 9 Statutes 994.

(*k*) *R. v. Jackson* (1906), 96 L. T. 77; 30 Digest 47, 369.

(*l*) See the cases noted on pp. 47, 48 of Vol. 30 of Digest.

(*m*) Act of 1910, s. 14 (2); 9 Statutes 994.

(*n*) *Ibid.*, s. 16; *ibid.*, 996.

at the time of the application; he need not give notice of his application for renewal. Evidence must be given on oath (o).

Notice of intention to oppose, given (1) to the clerk of the licensing justices, and (2) to the holder of the licence, the renewal of which will be opposed, is essential (p). The notice should state in general terms the grounds of the opposition. [634]

Refusal to Renew Licences.—*On-licences Existing at Passing of Act of 1904, other than Wine-licences.*—Justices may refuse renewal of such licences on the following grounds: (1) that the premises have been ill-conducted or are structurally deficient or unsuitable; (2) grounds connected with character or fitness of the proposed licence-holder; (3) that a renewal of the licence would be void (q).

Where the "renewal authority" (i.e. the licensing justices considering the renewal) do not refuse renewal on any of the above grounds but consider that refusal should be on other grounds, they ought to grant a "provisional renewal," and refer the matter to the compensation authority together with their report thereon (r). The latter must consider all reports made to them and hear all interested parties (which may include the justices of the licensing district); and they may refuse such renewal, subject to payment of compensation (r).

The compensation is provided by "the trade" itself, i.e. by that mutual insurance scheme first set up by the Act of 1904 requiring in each county and county borough a compensation fund to be established, contributions to which are levied upon the licensed premises in the area. But the compensation authority can only refuse renewal and give compensation in cases which are referred to them by the justices of the licensing district.

The compensation awarded is the difference between the value of the premises with the licence and their value without a licence, including a sum for the depreciation of trade fixtures arising by reason of the refusal to renew (s). The amount may be agreed between the parties interested in the licensed premises and approved by the confirming authority, or, failing such agreement, determined by the Commissioners of Inland Revenue, subject to an appeal to the High Court (t). The compensation authority have power only to approve or disapprove the amount; and to apportion that amount between the interested parties. [685]

On- and Off-licences Created since Passing of Act of 1904.—Justices have an absolute discretion to refuse renewal. No compensation on such refusal is payable. [636]

Appeal.—An appeal against a refusal to renew a licence lies to quarter sessions (u). [637]

Existing Off-licences for Wine, Spirits and Cider held by Applicant on June 25, 1902.—By sect. 17 of the Act of 1910, the licensing justices may only refuse the renewal of such a licence on one of the grounds mentioned in Part II. of the First Schedule to the Act (a). [638]

Transfer of Licences.—Transfers are dealt with at special sessions known as "transfer sessions," appointed at the general annual licensing

(o) Act of 1910, s. 16 (6).

(q) *Ibid.*, s. 18 and Sched. II., Part II.; 9 Statutes 998, 1047.

(r) *Ibid.*, s. 19.

(s) *Ibid.*, s. 20 (1); 9 Statutes 1000.

(t) *Ibid.*, s. 29; 9 Statutes 1006.

(p) *Ibid.*, s. 16 (3).

(q) *Ibid.*, s. 18 and Sched. II., Part II.; 9 Statutes 998, 1047.

(r) *Ibid.*, s. 19.

(s) *Ibid.*, s. 20 (1); 9 Statutes 1000.

(t) *Ibid.*, s. 20 (2).

(a) 9 Statutes 1046.

meeting to be held not less than four nor more than eight times a year (b). Transfers may be dealt with at the general annual licensing meeting. The transfer of a licence is the grant of a justices' licence in respect of certain premises to one person in substitution for another person who holds or has held the licence (c).

By sect. 23 (2), transfers can only be authorised in the circumstances mentioned in the Fourth Schedule to the Act (d), and then only to the person indicated in that Schedule.

No notice of opposition is required, and a transfer which is granted continues in force from the day on which it is granted until April 5 then next ensuing. [639]

Occasional Licence.—This is an authority granted to the holder of an on-licence to carry on sales of intoxicants at some place other than his ordinary place of business (e).

The licence is granted by the Board of Customs and Excise, with the previous consent of a petty sessional court. Notice must be served at least twenty-four hours before applying for such consent on the superintendent of police setting out: (i.) applicant's name and address; (ii.) the place and occasion in respect of which the licence is required; (iii.) the period for which the licence is to be in force; and (iv.) the hours to be specified in the consent of the justices (f). If the occasion is a public dinner or ball, the authority may allow sales at any hour; on other occasions they may only authorise sales between sunrise and 10 p.m.; and in no case can an occasional licence authorise sales over a period exceeding three consecutive days (g). [640]

Removal.—An ordinary removal consists of the removal of a licence from one set of premises to any other premises within the same licensing district or in the same county (h). Ordinary removals can only be granted at the general annual licensing meeting or an adjourned meeting (i). They require confirmation by the confirming authority. There is no appeal against refusal of an application.

Special removals can be applied for only when a house is (1) rendered unfit by fire, tempest or other such calamity, or (2) is included in a public improvement scheme (k).

A special removal can only be granted to premises within the same licensing district (l). They may be dealt with at transfer sessions as well as at the general annual licensing meeting, and require no confirmation by the confirming authority. [641]

Permitted Hours.—Sect. 1 of the Licensing Act, 1921 (m), contains three general provisions in regard to permitted hours for sale of intoxicants on licensed premises:

Weekdays.—(1) An earliest morning hour and a latest evening hour. In London these are 11 a.m. and 11 p.m.; and elsewhere 11 a.m. (or 9 a.m. if the local justices, being satisfied that the special requirements of the district render it desirable, so determine) and 10 p.m. (or 10.30 p.m. if the local justices, being satisfied as above, so determine).

(b) Act of 1910, s. 22; 9 Statutes 1002.

(c) *Ibid.*, s. 23 (1).

(e) Act of 1910, s. 64 (4); 9 Statutes 1021.

(g) See Revenue Act, 1863, s. 20, printed as amended by Licensing Act, 1874,

s. 10; 16 Statutes 212.

(h) Act of 1910, s. 24 (3); 9 Statutes 1003.

(i) *Ibid.*, s. 26.

(l) *Ibid.*, s. 24 (4); 9 Statutes 1003.

(d) 9 Statutes 1050.

(f) *Ibid.*, s. 64 (1).

(k) *Ibid.*, s. 24 (2).

(m) 9 Statutes 1055.

(2) A maximum number of hours. In London the maximum is 9, elsewhere 8 (or $8\frac{1}{2}$ if the local justices so determine). (3) A compulsory break of at least two hours commencing at or after midday. Within the limits imposed by these general provisions, it is left to the local justices to fix what the licensing hours shall be in each licensing district. [642]

The power of the justices to give a direction altering the permitted hours on week-days under proviso (b) to sect. 1 (1) of the Act of 1921 has been recently dealt with in sect. 1 of the Licensing (Permitted Hours) Act, 1934 (n), which allows them to give a direction as respects a part of the year only, consisting of a period of eight weeks or more. It had been decided in *R. v. Sussex Licensing JJ., Ex parte Bubb (o)*, that the permitted hours could not be increased by the justices during the period of summer time alone. [643]

Sundays, etc.—The general scheme of hours on Sunday, Christmas Day and Good Friday is similar to that for weekdays (p). But the limits are more confined and the total number of hours is five hours which must lie as follows: two hours between 12 noon and 3 p.m., and three between 6 p.m. and 10 p.m. No distinction is made between London and the provinces, but in Wales and Monmouthshire no intoxicating liquor can be sold from licensed premises on Sundays (p). [644]

Exemption Orders. General Order.—On-licensed premises may be exempted by general order from closing during certain hours when in the ordinary way they would have to be closed (q). Such orders are granted in London by the commissioners of police for the metropolis and for the City and elsewhere by a petty sessional court. There is no limit to the lateness of the hour which an order may cover except that the premises may not remain open between the hours of 1 a.m. and 2 a.m. Such exemptions are granted when evidence is produced to show that any considerable number of persons attending any public market, or following any public trade or calling require accommodation at premises in the immediate neighbourhood (q). [645]

Special Order.—Such an order is granted to on-licensed premises by the same authority as that which grants a general order of exemption (r). The following are cases which are regarded as special occasions for the grant of such an order: (1) special festivities held in a particular licensed house for some particular reason, such as an annual dinner; (2) special festivities arranged to celebrate some event not peculiar to a particular house, such as New Year's Eve, or an annual regatta or races which lasts several days. [646]

Control of Justices over Structure.—The consent of the licensing justices must be obtained to any alteration in on-licensed premises "which gives increased facilities for drinking, or conceals from observation any part of the premises used for drinking, or which affects the communication between the part of the premises where intoxicating liquor is sold and any other part of the premises, or any street or other public way" (s). There is no appeal against a refusal of consent by the licensing justices.

(n) 27 Statutes 340.

(o) (1934), 50 T. L. R. 410; Digest (Supp.).

(p) Licensing Act, 1921, s. 2; 9 Statutes 1087.

(q) Act of 1910, s. 55; *ibid.*, 1017.

(r) *Ibid.*, s. 57; *ibid.*, 1019.

(s) *Ibid.*, s. 71; *ibid.*, 1025.

When application for the renewal of a licence is made, the licensing justices may direct that, within a time fixed by the order, such structural alterations as they think reasonably necessary to secure the proper conduct of the business shall be made in that part of the premises where intoxicating liquor is sold or consumed (*l*). An appeal against any such order lies to quarter sessions (*l*). [647]

London.—In London the L.C.C. are the authority for the county of London (including the City) for the licensing of public entertainments, except as regards theatres and cinemas in certain areas which are licensed by the Lord Chamberlain for stage plays, and have absolute discretion as to conditions which may be attached to licences for public entertainment, whether in relation to liquor or otherwise. A stage play licence carries with it a right to apply for an excise licence. As regards premises licensed for other forms of public entertainment, including cinemas, exhibitions, etc., the council's practice with regard to the sale of intoxicating liquors varies according to the class of the premises concerned. Broadly speaking, the only absolute bar on the sale or consumption of intoxicating liquor imposed by the council is in respect of premises used primarily for cinemas and exhibitions. As regards other classes of premises, either no restriction is imposed or the licensee is limited to such "occasional" liquor licences as the licensing justices may in their discretion grant. The council never license for public entertainments that portion of premises in which drink is sold at a counter. [648]

(*l*) Act of 1910, s. 72; 9 Statutes 1026.

INVALID CARRIAGE

See AMBULANCES.

ISLE OF WIGHT

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General Position.—The Isle of Wight was constituted a separate administrative county under a county council on April 1, 1890, by a provisional order of the Local Government Board made under sects. 12, 54 of the L.G.A., 1888 (*a*), and confirmed by the Local Government Board's Provisional Order Confirmation (No. 2) Act, 1889. The Isle

(*a*) 10 Statutes 696, 730.

of Wight continues to be part of the county of Southampton for the purposes of the sheriff, lieutenant, custos rotulorum, assizes, quarter sessions, justices, juries, judicial arrangements generally, militia and clerk of the peace, but the Island has a separate standing joint committee and police force.

The Island comprises two boroughs (Newport and Ryde), three urban districts (Coves, Sandown-Shanklin and Ventnor) and one rural district containing fifteen parishes.

H.R.H. Princess Beatrice is the governor under the title of "Governor and Captain General," and there is a deputy governor who is also the custodian of Carisbrooke Castle.

The Island (exclusive of the boroughs of Newport and Ryde) forms a petty sessional division of the county of Southampton and contains the liberty of East Medina and the hundred of West Medina. It is a separate county court district with jurisdiction in bankruptcy, and monthly courts are held alternately at Newport and at Ryde.

The county council are the education authority for higher education for the whole of the Island. For elementary education, the island is divided into the borough of Newport, and the remainder of the Island for which the county council act.

For ecclesiastical purposes the Island is within the archdeaconry of the Isle of Wight and the diocese of Portsmouth, and is divided into the rural deaneries of East Wight and West Wight.

The Isle of Wight is a separate Parliamentary Division returning one member to Parliament. [640]

Highways.—By the Isle of Wight Highways Act, 1925 (*b*), the functions of the Isle of Wight R.D.C. as a highway authority were transferred to the county council, and by sect. 4 all roads in the rural district which were repairable by the R.D.C. became main roads. By sect. 9 all highways in the boroughs and urban districts repairable by the inhabitants at large also became main roads.

On several points the provisions of the local Act afforded precedents on which the provisions of the L.G.A., 1929, as to the transfer of highways to county councils, were founded. But sect. 138 (4) of the Act of 1929 (*c*) enacted that the provisions of that Act as to highways should not apply to the Isle of Wight, except as directed by an order of the M. of H. and that such an order might amend or repeal any provision of the local Act of 1925. By the L.G.A. (Application to the Isle of Wight) Order, 1930 (*d*), a number of amendments were made in the Isle of Wight Highways Act, 1925, to bring the law relating to classified and unclassified roads in the Island into line with the rest of England. Under sect. 9 of the local Act, the borough and urban district councils in the Island are entitled to repair and maintain the main roads in their respective areas, notwithstanding that the population of the area may be less than 20,000, and by the order this provision was extended to classified roads constructed since the Act of 1925 was passed. The order also provided for any bridge carrying a road in the rural, or carrying a classified road in a borough or urban district becoming repairable by the county council. One provision in the Act of 1925 which was not affected by the order is that in sect. 12 restricting the liability of the county council to pay or contribute to expenses in connection with works in a borough or urban district (1) for protecting

(b) 15 & 16 Geo. 5, c. xliii.

(d) S.R. & O., 1930, No. 737.

(c) 10 Statutes 975.

a road against the sea, (2) on any footpath adjoining the sea or the sea-shore; (3) on any footpath which is not at the side of a carriageway; (4) on any road adjoining or forming part of a quay or wharf; (5) on any river or sea wall. [650]

Coroners.—The Royal Governor of the Isle of Wight, H.R.H. Princess Beatrice, holds the office of coroner for the Isle of Wight, but the duties are performed by a deputy and assistant deputy coroner. The salary and expenses of the deputy coroner are paid by the county council. By sect. 3 of the Coroners (Amendment) Act, 1926 (e), it was provided that if His Majesty relinquished his right of appointing a coroner for the Isle of Wight, then, on a vacancy occurring at any time thereafter, the county council should have power to fill the vacancy, and that the provisions of the Act of 1926 and of any other enactment relating to the office of county coroner should apply accordingly. By an Order in Council dated July 25, 1927 (f), King George V. relinquished his right to appoint a person to fill the office of coroner for the Isle of Wight as from the date named. [651]

(e) 3 Statutes 781.

(f) S.R. & O., 1927, No. 676.

ISLES OF SCILLY

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Provisional Order of 1890.—Originally local government in the Isles of Scilly was conducted by the select vestry and overseers of the poor of St. Mary's and by the vestries and overseers of each of the other inhabited Isles, but the administration was reorganised in 1891 by the Isles of Scilly Order, 1890 (a), made under sect. 49 of the L.G.A., 1888 (b). That section authorised a provisional order for regulating the application to the Isles of the Act of 1888 and for applying to the Isles any provisions of any Act touching local government. The order might also provide for the establishment of councils and other local authorities separate from those in the county of Cornwall, and for contributions by the Isles to the county council of Cornwall in respect of costs incurred by that council for matters specified in the order as benefiting the Isles. The county council of Cornwall were, however, to have no greater powers or duties in the Isles than the quarter sessions of Cornwall had hitherto in fact exercised, and the Isles were not to be included in any electoral division of the county of Cornwall. [652]

By the order of 1890 the five inhabited Islands of Bryher, St. Martin's, St. Agnes, St. Mary's and Treseo were constituted separate parishes for

(a) Confirmed by 58 & 54 Vict. c. clxxvi.

(b) 10 Statutes 727. Now repealed by L.G.A., 1933, and replaced by s. 292 of that Act (26 Statutes 400).

all lay and civil purposes, and each parish was made a contributory place for the purposes of the P.H.As.

The order then provided for the establishment of a council in the Isles, to be called the council of the Isles of Scilly, to consist of a chairman, four aldermen and twenty councillors. This council exercise most of the functions of a county council and of an R.D.C., a system which might with advantage be extended to other counties of small area and population.

The chairman was to be Mr. T. A. Smith Dorrien Smith, the lessee of the islands, or such person resident in the Isles of Scilly and entitled to be elected a councillor, as the trustees of the Dorrien Smith Estate Act, 1884, should nominate, subject to the approval of the Duchy of Cornwall; and on the expiration or determination of his lease such person, qualified as before mentioned, as the Duke of Cornwall should nominate. The lessee of the Islands was also made the returning officer for an election of the council.

Mr. T. A. Smith Dorrien Smith died in 1918 and was succeeded as lessee of the Islands by his son, Major A. A. Dorrien Smith, D.S.O., who was elected chairman of the council on the nomination of the Duchy of Cornwall, and who still retains the office, although in 1922 he surrendered his lease of the Islands except for that portion comprising the parish of Tresco. [653]

Art. 12 of the Order of 1890 applied to the Isles and to the council sect. 3 (xiii.) of the Act of 1888 (c), with the result that the council are the local authority for the execution of the Diseases of Animals Act, 1894 to 1927 (d), the Destructive Insects and Pests Acts, 1877 to 1927 (e), the Wild Birds Protection Acts, 1880 to 1903 (f), the Weights and Measures Acts, 1878 to 1926 (g), the Sale of Gas Acts, 1859 and 1860 (h), and the Local Stamp Act, 1860 (i). For the purposes of the Sea Fisheries Regulation Act, 1888 (k), the council were to be deemed to be a county council established under the L.G.A., 1888.

Under Art. 13 of the Order of 1890 the Isles became, for the purposes of the P.H.As., a rural district, and the council subject to all the powers, duties and liabilities of a rural authority under those Acts. Certain urban powers were also put in force in the contributory place of St. Mary's, viz. as to the removal of house refuse, the cleansing, scavenging and lighting of streets, the licensing of hackney carriages and pleasure boats and vessels, with power to make bye-laws regulating the same (l).

The council were also empowered to deal with nuisances and infectious diseases on board ships in the customs port of Scilly (Art. 14), and became the highway authority for the whole of the Islands (Art. 15). [654]

Any sums payable in respect of expenses incurred in the prosecution of criminal offences committed in the Isles were first to be paid by the county treasurer of Cornwall and recovered by his council from the council of the Isles (Art. 21 (2)).

The council were given borrowing powers for certain purposes, and their accounts were made subject to an annual audit by a district auditor (Arts. 22, 23).

By Art. 24, a joint police committee was to be formed consisting

(c) 10 Statutes 680.

(e) *Ibid.*, 62 *et seq.*

(g) 20 Statutes 369 *et seq.*

(i) 11 Statutes 816.

(l) See P.H.A., 1875, ss. 42, 161, 172; 13 Statutes 643, 692, 697.

(d) 1 Statutes 380 *et seq.*

(f) *Ibid.*, 355 *et seq.*

(h) 8 Statutes 1230, 1252.

(k) 8 Statutes 743.

of an equal number of justices of the peace and members of the council, the lessee being an ex-officio member with power to vote. This committee were authorised to appoint permanent or special constables as might appear to them to be necessary, and any constables so appointed were to exercise in the Isles all the powers of members of a county police force under the general law relating to police.

Subject to the provisions of the Order of 1890, or under the laws by that order made applicable to the Isles of Scilly, where any appeal might be made to quarter sessions, the same might be made to the quarter sessions of the county of Cornwall; but where under the Highway Acts the approval or consent of quarter sessions was required to any act, matter or thing, the council in carrying out those Acts were not required to obtain such consent or approval (Art. 28).

Except so far as therein expressly provided, nothing in the order was to affect or prejudice any question as to whether the Isles of Scilly were, or were not, a part of the county of Cornwall (Art. 30), nor to prejudice or affect any property, rights, powers, authorities or privileges of H.R.H. the Prince of Wales, in right of his Duchy of Cornwall or of the possessor of the Duchy of Cornwall for the time being (Art. 31). [655]

Later Developments.—Under sect. 26 of the Education Act, 1902 (*m*), the council became the local education authority for the Isles, both for elementary and higher education.

By sect. 11 (3) of the Old Age Pensions Act, 1908 (*n*), the Isles were to be deemed a county and the council of the Isles a county council for the purposes of that Act. Sect. 71 (3) of the Mental Deficiency Act, 1913 (*o*), applied that Act also to the council of the Isles.

The National Insurance Act, 1911, was by sect. 79 made applicable to the Isles and a special insurance committee was set up, of which Mr. T. A. Smith Dorrien Smith became the first chairman.

Under the M. of A. & F.A., 1919, a scheme was prepared and approved for the constitution for the Isles of an agricultural committee, and an agricultural education sub-committee.

By sect. 45 of the Representation of the People Act, 1918 (*p*), that Act was applied to the Isles as if they were an administrative county, and the council a county council, but the Isles remain part of the parliamentary county of Cornwall and are included in the St. Ives division.

The council became the rating authority for the Isles under the R. & V.A., 1925, as modified and adapted to the Isles by an order of the M. of H., dated February 11, 1927 (*q*), and the council now appoint a rating committee and an assessment committee of whom one-third are not members of the council. Appeals against the decisions of this committee can be made to a special sessions of the justices resident in and acting for the Isles, and a further appeal may be carried to the quarter sessions of Cornwall.

The council are now, too, the poor law authority for the Isles, the L.G.A., 1929, having been applied by two orders (*r*) of the M. of H. made in 1929 and 1930, under sect. 138 (3) of the Act (*s*). The Poor Law Act, 1930, therefore applies to the Isles, and a public assistance scheme

(*m*) Repealed by the Education Act, 1921, see now s. 169 (5) of that Act; 7 Statutes 212.

(*n*) 20 Statutes 586.

(*p*) 7 Statutes 572.

(*r*) S.R. & O., 1929, No. 637; 1930, No. 216.

(*s*) 10 Statutes 975.

(*o*) 11 Statutes 196.

(*q*) S.R. & O., 1927, No. 50, as amended by S.R. & O., 1923, No. 502.

for the area of the council was approved by the Minister in September, 1930. Under this scheme a public assistance committee has been appointed consisting of twelve persons, two of whom are women, and the provisions of the Poor Law Acts are administered by them for all the Isles. [656]

Orders varying, modifying or enlarging the powers of the council have been made from time to time since 1890 and include, principally, the power to deal with vaccination, the granting of further urban powers to St. Mary's, the appointment of a superintendent registrar and registrar, and additional powers in relation to infectious diseases.

The L.G.A., 1933, repeals sect. 49 of the L.G.A., 1888, but by sect. 292 (t), the M. of H. may, upon the application of the council, make an order for regulating the application of that Act to the Isles of Scilly and for providing for the exercise and performance in the Isles of any functions which are for the time being conferred or imposed on local authorities. Any such order may (1) apply to the Isles any other public general Act relating to local government; (2) provide for the continuance of the council of the Isles and for the establishment of other local authorities in the Isles. Other provisions which may be included follow those authorised by sect. 49 of L.G.A., 1888 (u), but the order will not be a provisional order, as confirmation by Parliament is not required. It is understood that an order under this section is now (March, 1936) in course of preparation. [657]

The general duties of the council as a local government authority are carried out for the most part by the several committees appointed by them, and the chairmen of these are invested with considerable executive powers, subject, of course, to the control of the council over expenditure. The clerk, the M.O.H., a sanitary inspector and a school attendance officer are part-time officers only, whilst the agricultural and horticultural adviser to the agricultural committee and sub-committee for agricultural education, who has an experimental farm under his care and conducts research work into bulb and plant diseases, is a full-time official.

There is one paid and uniformed parish constable at St. Mary's with an assistant retained for duty as and when required. Twelve special constables, who reside in various parts of the Isles, are annually sworn in for police duties, but their services are rarely invoked.

A small poor law institution or poor house is maintained at St. Mary's under the care of a married woman. At present there is only one person in receipt of indoor relief. [658]

(t) 26 Statutes 460.

(u) 10 Statutes 727.

ISOLATION HOSPITALS

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See also titles :

HOSPITAL AUTHORITIES ;	HOSPITALS ;
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Preliminary Observations.—The term isolation hospital is used to denote a hospital for the reception of patients suffering from infectious disease. Since the primary function of isolation hospitals may be considered to be the prevention of the spread of infection, and this object was one of the main preoccupations of the borough and district councils as sanitary authorities under the P.H.As., such institutions have usually been provided by these authorities. Borough and district councils, in fact, have mostly restricted to this class of institution the hospitals which they have provided. Consequently many isolation hospitals are small, in conformity with the area and population which they serve, although a combination of two or more authorities for the establishment of a common hospital is permissible. The reluctance or inability of smaller authorities to incur the cost of hospitals, and their failure to take the initiative in combining for the purpose, has led to measures conferring hospital responsibilities upon county councils to an increasing extent, and empowering the Minister of Health to ensure that arrangements are made to his satisfaction. [659]

The general power to provide hospitals, contained in sect. 181 of the P.H.A., 1875 (a), extends to the provision of isolation hospitals, and may be exercised by county councils as well as by borough and district councils (b). The council may build a hospital or contract for the use of hospital accommodation not belonging to them, or make arrangements with the managers of a hospital for the reception of patients from their area on agreed terms. Two or more authorities may combine for the purpose, and this is preferable to the establishment of separate small institutions. Such a combination may be made by

(a) 18 Statutes 678.

(b) L.G.A., 1929, s. 14 (1) ; 10 Statutes 891.

the formation of a joint committee consisting of members of the respective authorities toward the expenses of which they may contribute in agreed proportions (c). Usually, however, a joint hospital district is formed by provisional order of the M. of H., under sect. 279 of the P.H.A., 1875 (d), setting up a joint hospital board, with power to acquire land, to borrow money and to issue precepts for contributions from the combined authorities in proportion to their rateable value. (See title HOSPITAL AUTHORITIES.) The initiative toward hospital provision, separately or jointly, under the Act of 1875 rests with the local authorities themselves, and the character of the accommodation provided is not subject to control by the M. of H. unless it is proposed to raise money by loan for the purpose (see *post*, p. 356). An authority may provide a hospital for the use of their inhabitants, in the area of another authority, without the consent of the council of that area so long as they conform to the requirements of that council as to construction and the laying of sewers and water mains (e). [660]

Isolation Hospitals Acts.—The establishment of county councils afforded an opportunity of approaching the costly and difficult problem of hospital accommodation for infectious disease from a broader point of view than that of the smaller borough and district councils. Accordingly the Isolation Hospitals Acts, 1893 and 1901 (f), placed the responsibility upon county councils of providing, or causing to be provided, an isolation hospital in any borough (*not being a county borough*) (g) or in any district within the county, on receipt of a petition or an official report and after satisfying themselves by local inquiry that such a hospital is required. Under this procedure, a county council are able to take into consideration the hospital requirements of areas of the county, and, by making contributions to the capital and maintenance costs of hospitals, to exercise control over the location, type, size and management of the institutions serving the several areas within the county. [661]

Initiative.—The first step toward the provision of a hospital under the Acts may be taken by a borough or district council, or by two or more such councils acting conjointly, or by not less than twenty-five ratepayers of any contributory place (h). An application must be made in the form of a petition to the county council stating the area for which the proposed hospital is required and the reasons for the application (Act of 1893, s. 5 (1)). A county council may themselves, however, take the initiative by instructing the county M.O.H. to inquire into the need of any area for an isolation hospital (Act of 1893, s. 6), and even if a petition has been presented such an official investigation is usually made for the guidance of the county council. If they are satisfied, after consideration of a petition, that there is a *prima facie* case for proceeding further a local inquiry must be held by the county council (Act of 1893, s. 5 (2)), acting through a committee consisting entirely or partly of their members, with such other assistance as they may think desirable (Act of 1893, s. 7). They may take the same

(c) P.H.A., 1875, s. 285 (13 Statutes 744); L.G.A., 1933, s. 91 (26 Statutes 355).
(d) 13 Statutes 742.

(e) *Withington Local Board v. Manchester Corpn.*, [1893] 2 Ch. 19; 38 Digest 199, 346.

(f) 13 Statutes 862, 888. These Acts are not well drawn, and on some points are obscure.

(g) Act of 1893, s. 2.

(h) *Ibid.*, s. 4; 13 Statutes 862.

action if the medical officer has recommended the establishment of a hospital after the investigation above-mentioned (Act of 1893, s. 6). Due notice of the time and place of inquiry must be given to all interested parties, such as the petitioners, the councils concerned and any owners or ratepayers who may be affected by the establishment of the hospital. [662]

Constitution of Hospital District.—As a result of the inquiry, a county council must under sect. 9 of the Act of 1893 make and transmit to the M. of H. an order either dismissing the petition or constituting a hospital district for the establishment of an isolation hospital. By sect. 8 of the Act of 1893, they may vary the proposed district by adding or subtracting a county district or rural parish. A county district or rural parish which, in the opinion of the county council, has adequate hospital accommodation may not be included in a hospital district without the assent of that county district council. A hospital area must comprise a complete county district, or rural parish or a combination of them (sect. 8 (1)). Any borough, district or parish council included in a hospital district so constituted may, if they object to its formation, appeal to the Minister within three months from the date of the order (sect. 8 (3)). The Minister's confirmation, disallowance or modification of the order is final (i), and he may also by order authorise the inclusion of a borough of less than 10,000 population in a hospital district without the consent of the borough council, but not a borough of larger population (k). An existing hospital provided by a borough or district council, or by a joint board (*ante*, p. 350), may be transferred under sect. 1 of the Act of 1901 (l) to the county council with the consent of that council and with the Minister's sanction, on such terms and conditions as the Minister may determine. An obligatory condition of the Minister's sanction is that the hospital accommodation is, or will be made, adequate for the area from which the hospital is transferred. [668]

Hospital Committees.—On the formation of a hospital district, the county council must under sect. 10 of the Act of 1893 as amended by sect. 8 of the Act of 1901 (m), set up a committee of management. By that section as amended, if the county council do not propose to contribute to the funds of the hospital, the committee must consist wholly of representatives of the local areas within the hospital district, if the councils so desire. If the hospital district is comprised wholly or mainly within the area of one borough or district, the council may be made the hospital committee. Apart from such special circumstances, the committee may consist wholly of representatives of the county council or wholly of representatives of the other councils involved or of persons belonging to both categories. The Minister may, on appeal by any aggrieved authority, modify the constitution of a committee so as to provide for a fair representation of all the interested authorities.

Regulations must be made by the county council for the election, rotation and qualification of members of a hospital committee (Act of 1893, s. 10 (1)). The committee are a body corporate with perpetual succession and a common seal (Act of 1893, s. 10 (3)), and may, under the direction of and delegation by the county council, acquire and hold land and provide, maintain and manage the hospital (n), save that

(i) Isolation Hospitals Act, 1893, s. 8 (3); 13 Statutes 864.

(k) Act of 1893, s. 2; *ibid.*, 862.

(l) 13 Statutes 888.

(m) Printed as amended *ibid.*, 864.

(n) Act of 1893, ss. 11, 12; 13 Statutes 865.

powers to inspect the hospital and to raise money by loan are reserved to the county council by the proviso to sect. 10 (2) of the Act. [664]

Temporary Accommodation.—Pending the erection of a hospital or during periods of excessive prevalence of disease a hospital committee may require to make temporary arrangements for the reception of patients. For this purpose they may make use of temporary structures or hired buildings for the isolation of patients in either of the above-mentioned contingencies (o), but any such action should be carefully considered in the light of the Ministry's expressed opinion as to the general unsuitability of such accommodation (*post*, p. 357). [665]

Expenses.—The cost of providing and maintaining a hospital and of the isolation and treatment of patients is divided by sect. 17 of the Act of 1893 (p) into three main classes, viz.: "structural expenses," being the initial cost of the hospital or any permanent extension of it, or any alteration or repair of the drainage and any structural repairs, and also the cost of furniture and equipment; "establishment expenses," being the cost of maintenance of the fabric, equipment and furniture, including ordinary repairs, and also the salaries of officers and employees; and "patients' expenses," being the cost of such things as conveyance, food, medicines and disinfection in relation to individual patients. The committee must therefore keep their accounts in a way which will admit of the ready separation of these items. Under sects. 16, 19 of the Act of 1893, patients' expenses are payable by the council of the area from which the patient was sent, except in the case of persons in receipt of poor relief for whom the county council are responsible. If patients are admitted from a place beyond the hospital district, additional charges to meet structural and establishment expenses may be made by the committee. Persons undertaking to defray the cost of special accommodation in addition to the ordinary cost of their maintenance, may be admitted as special patients (Act of 1893, s. 16 (2)). Apart from these charges for special patients and patients from non-contributory districts, all structural and establishment expenses fall primarily upon the district rates, and, where more than one borough or district is included in the hospital district, the proportions in which these costs are allocated are determined by the order of the county council (*ibid.*, s. 18). The latter may, however, make from the county fund capital or annual contributions toward structural or establishment expenses, if they think that such contributions will benefit the county as a whole (*ibid.*, sect. 21). A county council may also contribute to the cost of a hospital already provided under the P.H.A., 1875, by a borough or district council or by a joint board, but the sanction of the Minister is required if the hospital or any permanent part of it has been provided out of revenue (q). In these ways it is possible for a county council to bear the whole cost of the isolation hospitals in their area, except the maintenance expenses of patients not in receipt of poor relief. [666]

Diseases to which the Acts Apply.—Patients may be received ordinarily into hospitals provided under the Isolation Hospitals Acts if they suffer from any disease specifically mentioned in sect. 6 of the Infectious Disease (Notification) Act, 1889 (r), but not if they have contracted diseases notifiable under regulations made by the Minister.

(o) Act of 1893, s. 14; 13 Statutes 866.

(p) 13 Statutes 860.

(q) Act of 1901, s. 2 (1); 13 Statutes 888.

(r) 13 Statutes 813. And see the Act of 1893, s. 26; 13 Statutes 869.

But the county council, or any committee such as a hospital committee to whom they have delegated the power, may extend the Act of 1893 to any other infectious disease by resolution approved by the Minister and duly published (s). [667]

Hospital Provision under Regulations.—The M. of H. may make regulations for the prevention and treatment of infectious disease (t), and county councils may be declared to be authorities responsible for their observance, if they consent (u). The regulations may cover the provision of isolation hospitals, name the diseases which may be treated therein, define the part of the county for which the county council accept this responsibility and prescribe the way in which the cost is to be borne (a). This mode of procedure is more direct and much less complicated than that required by the Isolation Hospitals Acts (*ante*, pp. 350—352). The infectious diseases which may be treated are such as the Minister, in agreement with the county council, considers should be treated, and in some series of regulations the expression "infectious disease" has been defined as including any infectious disease except smallpox or tuberculosis (b). Alternatively the regulations may apply to one disease only, such as smallpox (c). The Minister requires that provision for isolation and treatment shall be made to his satisfaction, that the site shall be subject to his approval, that the hospital will be kept in readiness for the admission at any time of patients suffering from infectious disease, that it will not be used for any other purpose without his permission, that there shall be suitable and sufficient accommodation for staff, that provision will be made for disinfection and the prevention of the dissemination of infection by the hospital, and that suitable records of patients will be kept and particulars furnished, when required, to the county medical officer or the M.O.H. of the area to which any patient belongs. At the same time power is also given to the county council to provide disinfecting stations and to carry out disinfection of articles from infected dwelling-houses, to convey patients to and from hospitals and to admit patients compulsorily removed to hospital (d). Before regulations are made, the Ministry will require to be assured by the county council that they are determined to exercise effectively the powers so conferred upon them. It should be noted, however, that county councils have now the general power to provide hospitals (e) formerly reserved to borough and district councils, but regulations of the kind under consideration may continue to provide a convenient means of defining the relations between the county council and borough or district councils in relation to the isolation and treatment of persons suffering from infectious disease. [668]

Transfer of Powers to County Council.—In addition to the arrangements between county and district councils made possible by the Isolation Hospitals Acts (*ante*, pp. 350—352), the responsibility for making hospital provision may be taken over from a borough or

(s) See Isolation Hospitals Act, 1893, s. 26; 13 Statutes 869.

(t) P.H.A., 1875, s. 130; *ibid.*, 678.

(u) P.H. (Prevention and Treatment of Disease) Act, 1913, s. 2; *ibid.*, 953.

(a) P.H.A., 1925, s. 61; *ibid.*, 1141.

(b) See the County of Carmarthen (Prevention and Treatment of Infectious Disease) Regulations, 1927; S.R. & O., 1927, No. 69.

(c) See the County of Carmarthen (Prevention and Treatment of Smallpox) Regulations, 1927; S.R. & O., 1927, No. 390.

(d) P.H.A., 1875, ss. 121—124; 13 Statutes 675.

(e) L.G.A., 1929, s. 14 (1); 10 Statutes 891.

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district council by a county council by agreement under sect. 57 (2) of the L.G.A., 1929 (f). Such an agreement may be for a specified term or may be subject to variation or termination on the expiry of due notice. Further, if the Minister, on information at his disposal and after holding a local inquiry, is satisfied that a borough or district council have failed in their duty as to the provision of a hospital, he may by order set a time limit for such provision to be made and, in the event of non-compliance, transfer the responsibility to the county council (g). An order made in this way may be made to operate for a definite period or until the Minister revokes the order. In practice, such a transfer of powers is unlikely to be made looking to the alternative and more effective means now to be described. [669]

Isolation Hospital Surveys.—The exercise of hospital functions by county councils has been left largely to their discretion. The duty, however, has been imposed upon them by sect. 63 (1) of the L.G.A., 1929 (h), of making a survey of the hospital accommodation for infectious disease in the county, whether provided by themselves or otherwise, and of submitting a scheme to the Minister for making such provision adequate (i). Such a scheme is intended to be comprehensive and must be prepared in consultation with the borough and district councils and, if necessary, with the councils of adjoining county boroughs (not necessarily, it would appear, within the geographical county) (sect. 63 (2)). Arrangements may be made in the scheme for placing accommodation at a hospital of one council at the disposal of others on appropriate terms, for the provision of new accommodation by any borough or district council and for reciprocal agreements for the reception of patients between the county or borough or district councils on the one hand, and the council of an adjoining county borough on the other (sect. 63 (3)). The duty is not imposed upon the county council of including in the scheme the provision by themselves of new hospitals or the taking over of existing accommodation from local authorities, but it would appear that such arrangements, being permissible (*ante*, pp. 350—353), may be embodied in a scheme. If the Minister is satisfied that a borough or district council have failed to discharge their hospital functions under a scheme he may, after the county and other councils have had an opportunity to be heard, by order transfer the functions of the borough or district council in respect of hospital provision and maintenance to the county council (sect. 63 (6)). Hospital schemes require the Minister's approval and may be modified by him after consideration of any submissions made by any council affected (sect. 63 (4)). Schemes were due to be forwarded to the Minister "as soon as may be" after April 1, 1930 (sect. 63 (1)), but latitude in time has been allowed to county councils in view of the complex character of the arrangements involved. The Minister, however, may call upon a county council to submit a scheme and, if they fail to do so within six months, prepare one himself after consulting them and the borough and district councils within the county (sect. 63 (5)). [870]

Reception of Patients from other Areas.—Under the P.H.A., 1875, the general power to receive patients is restricted to the admission of

(f) 10 Statutes 922.

(g) L.G.A., 1929, s. 57 (8); 10 Statutes 923.

(h) 10 Statutes 925.

(i) M. of H. Memo. L.G.A., 40, September, 1930, and Model Scheme attached should be consulted.

inhabitants of a borough or district whose council have singly or jointly provided a hospital, or to those sent in by agreement with, and at the cost of, the councils of other areas (*k*). No such limitation is contained in the Isolation Hospitals Act, 1893; see sect. 16 (1) of that Act. Most authorities have been accustomed to admit persons suffering from infectious disease who are temporarily resident in their area, for the protection of their own inhabitants from the spread of infection, but the Minister has been advised recently that, under the general law, no obligation to do so rests either upon the council of the area in which a person is temporarily resident, nor upon the council of the place where his permanent home is situated (*l*). Some authorities disclaimed responsibility under these conditions, so that no accommodation was available in either area for the isolation of the patient. The Minister has accordingly made regulations imposing on borough and district councils and joint hospital boards constituted under the P.H.A., 1875, the same powers and duties in relation to persons for the time being within their area and suffering from infectious disease as they have in respect of the inhabitants of their borough or district (*m*). The right of selection of patients for admission on medical grounds remains. These regulations apply to the L.C.C. (*n*). [671]

Diseases for which Isolation Hospitals may be Provided.—Under the general power in sect. 181 of the P.H.A., 1875 (*o*), to provide hospitals "for the sick" there is no restriction as to the types of infectious diseases which may be admitted for isolation and treatment. As already mentioned (*ante*, p. 352) hospitals provided under the Isolation Hospitals Acts may be used only for certain kinds of infectious disease and in regulations of the Minister, constituting a county council an authority for isolation hospital purposes, the infectious diseases to which the regulations apply are defined. The separation of a hospital for smallpox from other hospitals is also required. [672]

Payments by or for Patients.—The cost of maintaining a patient in a hospital under the P.H.A., not being a person in receipt of poor relief, is a debt due to the authority incurring the expense, which may be recovered from the patient within six months after his discharge (*p*), but the authority are not obliged to impose any charge (*q*). The M. of H. have expressed the view that the imposition of charges might tend to prevent the use of hospitals by those who have the poorest facilities for isolation and treatment at home and so react upon the general public health (*r*). The cost of maintenance of persons in receipt of relief may be recovered from a county or county borough council if the patient is sent in under their order (*s*), and these councils may make annual subscriptions toward the maintenance of isolation hospitals which receive poor persons whether sent in by their order or

(*k*) P.H.A., 1875, s. 131; 13 Statutes 678.

(*l*) M. of H. Circular 1418, July, 1934.

(*m*) The Public Health (Treatment of Infectious Disease) Regulations, 1934, S.R. & O., 1934, No. 674.

(*n*) With their consent which is necessary under P.H. (Prevention and Treatment of Disease) Act, 1913, s. 2; 13 Statutes 953.

(*o*) 13 Statutes 678.

(*p*) P.H.A., 1875, s. 132; 13 Statutes 679.

(*q*) See P.H.A. Amf. Act, 1907, s. 40; 13 Statutes 933.

(*r*) M. of H. Mem. Hosp., 2, January, 1924.

(*s*) See cases cited, Lumley's Public Health, 10th ed., pp. 258—9.

not (*f*). Patients' expenses in respect of poor persons treated at a hospital provided under the Isolation Hospitals Act, 1893, are recoverable under sect. 19 (1) of that Act from the council of the county or county borough from which the patient is sent, while special patients' expenses are a debt due to and recoverable from the patient or from his estate (sect. 19 (4)). Other patients' expenses under the Act of 1893 cannot be charged direct to the patient by the hospital committee but are payable by the council of the area from which he was sent (sect. 19 (2)). The P.H.A. affords no redress against any person but the patient unless there is a contract, express or implied, between the hospital authority and that person (*u*). [673]

Port Isolation Hospitals.—Port sanitary authorities, constituted by provisional order (*a*) or order of the Minister (*b*), may be invested with any of the powers and duties contained in the P.H.A., 1875, including the power under sect. 131 of that Act to provide a hospital, and may borrow money for the purpose (*c*). If required by the Minister they must provide or arrange for hospital accommodation for persons suffering from infectious disease (*d*), an expression which includes any acute infectious disease except venereal disease (*e*). Some port sanitary authorities maintain hospitals, but it is more usual for arrangements to be made with a neighbouring local authority for the reception of patients. [674]

Planning, Construction, etc. Control by the Minister.—Unless a hospital is provided under regulations made by the Minister (*supra* and *ante*, p. 353), he has no statutory power to exercise control over the proposal as regards the character, size, etc. of the institution. If, therefore, the land and buildings are to be acquired and erected out of revenue, the council may design the hospital according to their own ideas. Usually, however, local authorities desire to borrow for the purpose and must obtain the sanction of the Minister (*f*). Sanction to borrow for hospital provision is given only after the officers of the Ministry have had an opportunity of scrutinising the proposals in detail and, frequently, after holding a public local inquiry (*g*). The Ministry ask for very clear and definite statements as to the nature of the proposals, their estimated cost, the nature and location of the site (with maps) and plans of the building to be erected (*h*). (See also titles HOSPITALS and HOSPITAL AUTHORITIES).

For the guidance of local authorities who may ask for sanction to borrow, the Ministry have set out the general principles which should be observed in the preparation of the proposals (*i*). Emphasis is laid on the importance of providing isolation hospitals in advance of requirements rather than on an emergency, both because their use for the prevention of the spread of infection is most effective at the onset of an epidemic (and therefore before emergency buildings can be made

(*f*) Poor Law Act, 1930, s. 67; 12 Statutes 1001.

(*u*) See cases cited, Lumley's Public Health, 10th ed., p. 258.

(*a*) P.H.A., 1875, s. 287; 13 Statutes 745.

(*b*) P.H. (Ships, etc.) Act, 1885, s. 3; 13 Statutes 506.

(*c*) P.H.A., 1875, s. 244; *ibid.*, 727.

(*d*) Port Sanitary Regulations, 1933, Art. 23; S.R. & O., 1933, No. 39.

(*e*) *Ibid.*, Art. 2.

(*f*) L.G.A., 1933, s. 193; 26 Statutes 412.

(*g*) *Ibid.*, s. 290; 26 Statutes 459.

(*h*) M. of H. Memo. Lumley's Public Health, 10th ed., p. 3143.

(*i*) M. of H. Memo. Hosp., 2, January, 1924.

available in practice) and because temporary and hurriedly erected buildings are never satisfactory in construction. It may be mentioned that this pronouncement is not invalidated by the present-day medical opinion that the treatment of patients is, on the whole, a more important function of isolation hospitals than the prevention of the spread of infection.

In determining the number of hospital beds required, consideration should be given to such matters as the character of the borough or district, whether urban or rural or associated with a port, the present and prospective growth of the population, the proportion of children in the community and the nature of their housing. A rough basis of one bed per 1,000 of the population has been suggested but cannot be taken as definitive. On the one hand, the decline in the severity of certain diseases, such as scarlet fever, and the fall in prevalence of others, like enteric fever, and, on the other, the increasing tendency to admit to isolation hospitals diseases not formerly treated, such as measles, whooping cough, puerperal fever, ophthalmia neonatorum and poliomyelitis must be taken into consideration in deciding not only how many beds should be provided, but also as to their arrangement in the hospital. In any case, the site and planning should permit of ready extension in the light of future experience. [675]

A central site should be selected if possible, but not in a very populous neighbourhood. As special installations at hospitals of water-supplies, or plant for sewage purification or lighting, are frequently unsatisfactory and expensive, there is advantage in choosing a site where there is access to public provision. The site should exceed initial requirements in size and should rarely be less than two acres. It should be surrounded by a wall or close fence or undimble railing at least 6 ft. 6 in. in height and no building should be placed within 40 ft. of this boundary.

The buildings, in three main classes, viz. wards, administrative and out-offices, should be of brick or stone. Loans are not readily granted for temporary structures, but this does not mean that massive and costly types of construction are favoured. Existing buildings are usually unsuitable for infectious cases, but a house purchased with the site may serve for administrative quarters. In practice it is often difficult to obtain suitable land near a centre of population without purchasing a large house. All buildings containing infective persons or articles should be separated from other buildings by at least 40 ft.

Administrative quarters, whether in one or more buildings, should provide central offices, stores, a dispensary and kitchens and accommodation for staff, and should be capable of extension. Out-offices, such as a boiler-house, engine-house, laundry, disinfecting-chamber and mortuary should also be designed for possible extension. Ward blocks, containing separate wards for males and females, each preferably with not more than twelve beds, are usually of one storey. Additional observation cubicles or separate rooms should be provided in a special observation block, or partly in such a block and partly attached to the ward-blocks, in a proportion which experience indicates at 25—30 per cent. of the total number of beds in the hospital. In ordinary wards, each bed should have 12 linear feet of wall space, 144 square feet of floor area and 1,872 cubic feet of air space; observation cubicles or rooms should have at least 12 by 10 feet of floor space. The walls and floors should be impervious and the corners and angles rounded to facilitate cleaning. [676]

Smallpox Hospitals.—Hospitals for smallpox, which are not likely to be in constant use, may with special advantage be the subject of a joint scheme and may be provided in any of the ways applicable to other isolation hospitals (*ante*, pp. 349—353). If they are provided out of loan, the Ministry insist upon special conditions as to site. There must be less than 200 population and no residential institution within a radius of a quarter of a mile; less than 600 population within half a mile; and the hospital must be reserved entirely for smallpox. Air space must be at least 2,000 cubic feet per bed, in which calculation not more than 18 linear feet of height may be taken into account.

A proposal to build a smallpox hospital often evokes violent opposition, and the selection of a site must be made with extreme care, particularly where a borough council propose to establish a hospital outside their borough in a neighbouring urban or rural district. It has been pointed out, *ante*, at p. 350, that a formal consent by the council within whose area the hospital will be situate is not required, though some control can be exercised by them. The theory of the aerial convection of smallpox is always advanced as a ground of opposition by opponents. [377]

An injunction may be granted to prevent the erection of an isolation hospital on the ground of nuisance, and the statutory powers of provision afford no defence (*k*). The courts are now less ready than formerly to assume that danger will arise from the erection of an isolation hospital (*l*). [378]

London.—See title HOSPITAL SERVICES (LONDON).

(*k*) *Managers of Metropolitan Asylum District v. Hill* (1881), 6 App. Cas. 193; 38 Digest 44, 256.

(*l*) *A.G. v. Manchester Corpn.*, [1893] 2 Ch. 87; 38 Digest 198, 339, and other cases cited in Lumley's Public Health, 10th edn., p. 255.

JOINT ACTION

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See also titles : ASSOCIATIONS ;
CONTRIBUTIONS TO COST OF WORKS AND SERVICES ;
JOINT BOARDS AND COMMITTEES.

This title surveys the methods by which local authorities may co-operate with one another and with bodies other than local authorities for purposes in which they are jointly interested.

CO-OPERATION BETWEEN LOCAL AUTHORITIES

Introduction.—The administrative duties of local authorities are generally imposed upon them individually and their power of action

is circumscribed by the operation of the doctrine of *ultra vires* (see title *ULTRA VIRES*). Joint action to be effective, therefore, must, except in the simplest situations, be taken under powers granted specifically by the legislature. A number of statutes by which these powers are given to local authorities will be mentioned in this title. In some instances combination is attained by agreement between the authorities concerned; in other instances the combination must be authorised by a departmental order, either a provisional order which must be confirmed by a bill in Parliament, or an ordinary order which needs no such confirmation.

Co-operation between local authorities may vary, from the taking of action by one local authority with the knowledge of another, to the joint constitution of a new local authority. The co-operation may be voluntary, depending on the initiative of the local authorities themselves, or compulsory, as for example under a statute directing the appointment of members of a body.

The First Report of the Royal Commission on Local Government published in 1925 (a), divided the methods of joint exercise by local authorities of their functions into four categories, (1) arrangements for specific purposes involving the constitution of joint bodies with independent financial powers which, they noted, were usually called joint boards; (2) arrangements for general or specific purposes involving the constitution of joint bodies without independent financial powers usually called joint committees; (3) arrangements for work of a deliberative as distinct from an executive character involving the formation of advisory bodies; (4) agreements for specific purposes not necessarily involving the constitution of a Joint Board or Joint Committee. To these may be added as methods of co-operation, (5) the appointment of members of an independent authority, e.g., a catchment board, and (6) action, or abstinence from action, by one local authority with the knowledge and tacit or express assent of another.

The advantages of co-operation and the advantages and disadvantages of each particular form of co-operation listed above are fairly obvious. The following may, however, be mentioned. Co-operation serves to overcome the difficulties caused by the fact that the best area of administration for one particular service does not necessarily correspond with the best area of administration for another particular service. The more services a local authority administers the greater this difficulty becomes. The M. of H. expressed the opinion (b), in discussing the considerations to be taken into account in reviewing county districts, that it does not always follow that the whole of a local government area should necessarily be provided with all its services by one authority and referred to the possibility of agreements between authorities. Even after the alterations made by the county reviews under sect. 46 of the L.G.A., 1929 (c), in the direction of strengthening the resources of individual districts have taken full effect, there will be many services which can be more efficiently and economically administered (as for instance by the prevention of overlapping), or more easily extended and improved (as for instance by the provision of institutions or personal services which could not be economically provided for a single district) by co-operation between two or more

(a) Cmd. 2506.

(b) In Part III. of Memo. L.G.A. 24 issued in February, 1931.

(c) 10 Statutes 916.

local authorities than by one acting alone. An obvious, if extreme, example is the provision of aerodromes.

More centralisation of services, however, is by no means always an advantage. Certain services in which personal attention to individuals at intervals is necessary, as, for example, medical attention at irregular intervals, may be more satisfactorily administered by utilising the services of part-time officers engaged in private practice. Moreover the institution of services to cover the area which is economically most desirable may result in a loss of civic responsibility in the running of the services. [679]

(1) *Joint Boards*.—The most comprehensive form of joint action is the setting up by two or more local authorities of a body with independent financial powers, usually called a joint board, to administer in their area a specific service which each of the constituent authorities is empowered to provide. Joint boards may, for example, be formed under sect. 279 of the P.H.A., 1875 (*d*), for procuring a common supply of water, for carrying out a sewerage system or for other purposes of the Act. The joint board is the most satisfactory method of combination for the exercise of permanent functions, particularly where land has to be acquired for the common purpose, as a joint board is a body corporate. The service may often be more efficiently and economically managed by the joint body than by the constituent bodies individually. On the other hand the views and interests of a minority may be inadequately represented on the joint board which is not directly responsible to the local government electors and therefore may not be responsive to public opinion. For the formation and powers of joint boards generally, see title JOINT BOARDS AND COMMITTEES. [680]

(2) *Joint Committees* and (3) *Joint Advisory Committees*.—A joint body without independent powers is usually known as a joint committee. This is the most flexible method of co-operation between local authorities which, at the same time, has the advantages of continuity of policy and of retained control by the constituent authorities.

Sect. 91 of the L.G.A., 1933 (*e*), authorises the council of a county, borough or district, or a parish council, to concur with any one or more of such councils in appointing a joint committee of their respective members for any purpose in which they are jointly interested, and to delegate with or without restrictions or conditions to the joint committee any functions relating to the purpose for which the committee was formed, except the power of levying, or issuing a precept for, a rate or of borrowing money. This section does not authorise the appointment of a joint committee for any purpose for which the appointing authorities may or must under any other enactment appoint a joint committee (*f*).

The very wide powers of the section may be freely used since an authority need not commit themselves to any course of action that they cannot themselves control and from which they cannot at their own discretion withdraw. At the same time they may, if they wish, enjoy a large part of the advantages of full co-operation. The joint committee is at some disadvantage as compared with a joint board in matters requiring continuity of policy or involving the holding of property. There is also some disadvantage in the tendency in members of a joint committee to consider themselves merely as delegates of their appointing authorities, which makes them unwilling to take action without specific

(*d*) 18 Statutes 742.

(*e*) 26 Statutes 355.

(*f*) See sub-s. (4).

authorisation even when the committee is intended for action. For the formation and powers of joint committees and joint advisory committees, see title **JOINT BOARDS AND COMMITTEES**. [681]

(4) *Agreements for specific purposes not necessarily involving the constitution of a Joint Board or Joint Committee.*—Such agreements may naturally be of the greatest variety. On pp. 362 to 366 below will be found a list of those forms of co-operation of this kind for which specific sanction has been given by Act of Parliament together with some examples of co-operation not expressly authorised by any general Act. [682]

(5) *Co-operation by the appointment of members of an independent authority.*—This cannot usefully be fully dealt with here (g). Reference should be made to the title dealing with the independent authority, e.g. see title **CATCHMENT BOARDS**. [683]

(6) *Action or abstinence from action by one local authority with the knowledge and tacit or express assent of another.*—This is the simplest form of co-operation and is practised at all times by local authorities. Formal agreements to take or refrain from action are not uncommon. Such agreements should be carefully scrutinised to ensure that they are not *ultra vires*, for example by binding an authority to use a discretion in a manner other than that intended by the enabling statute. [684]

Combination for the Execution of Works.—Under sect. 285 of the P.H.A., 1875 (h), any local authority may, with the consent of a neighbouring authority, execute such works or do such things in the other authority's district as they may do in their own district, and may settle terms as to payment or other consideration in respect of the works. Moreover two or more local authorities may combine for the execution and maintenance of works for the benefit of their respective districts, or of any part thereof. Moneys which any local authority may agree to contribute for defraying expenses are to be deemed expenses incurred by them in the execution of works within their district. [685]

Local authorities have sometimes obtained powers in private Acts to act in co-operation with their neighbours in administering areas near their joint boundary. An interesting example of this is to be found in sect. 14 of the Croydon Corporation Act, 1935 (i), which provides that where the municipal boundary is in the centre of a private street, or divides that street from the premises fronting it and difficulties have arisen in making up the street or in applying sects. 150 to 152 of the P.H.A., 1875, the corporation have power to act, with the consent of the neighbouring authority, as if the whole street, or the street and the premises, were comprised in the borough. In giving their consent, the neighbouring authority may attach terms and conditions thereto, disputes as to the reasonableness of such terms and conditions being determinable by the Minister of Health, who may, in case consent is

(g) The method of appointment even among bodies of similar type are sometimes very various. For example, the conservators of Banstead Common are appointed by the lord of the manor and the Banstead U.D.C., those of Harrow Weald jointly by the Harrow and Wembley Urban District Councils, and those of Wimbledon and Putney by the Home Secretary, the Secretary of State for War, and the First Commissioner of Works who each appoint one conservator while others are appointed by occupiers of dwelling-houses upon a system of plural voting according to rateable value and distance.

(h) 18 Statutes 744.

(i) 25 & 26 Geo. 5, c. cix.

refused altogether, authorise the borough to proceed without it. When the street becomes repairable by the inhabitants at large, the cost of repair is borne and proportionately divided between the corporation and the neighbouring authority, and any sum payable by the latter to the corporation is recoverable in a court of summary jurisdiction. The corporation may also declare a street falling partly within and partly without their area to be a new street under sect. 30 of the P.H.A., 1925 (*k*). [686]

Combination for Appointment of M.O.H.—Under sect. 112 of the L.G.A., 1933 (*l*), which takes the place of sect. 286 of the P.H.A., 1875, the Minister of Health may by order unite two or more districts (defined by sub-sect. (5) as county boroughs or county districts) for the appointment of an M.O.H., on representations being made to him that such union would diminish expense or otherwise be for the advantage of the districts. The order may provide for the mode of appointment and removal of the officer by representatives of the district councils, the meetings of the representatives, and the allocation of expenses between the councils. No borough or urban district with a population of 20,000 or more, and no borough having a separate court of quarter sessions may be included in such district without the consent of their council, and no M.O.H. may be appointed for any of the districts in the union except as an assistant to the joint officer.

County councils are under a duty of making arrangements, by means of the combination of districts or otherwise, for securing that every M.O.H. appointed for a county district after the coming into force of the L.G.A., 1933, is restricted by the terms of his employment from engaging in private practice (*m*). [687]

These provisions clearly make for greater efficiency in the public medical service, but many county councils have been able still further to improve that service by adoption of a co-ordinated scheme of public health services for the whole of the county. Such a scheme is in operation in Essex, where the county is split into divisions, each with a full-time M.O.H. appointed by a joint committee consisting of representatives of the county council and of the local authorities. This divisional officer is responsible for all the medical and public health services of his area, but the county council provide opportunities for experts and specialists to be available to advise the divisional officers where required. [688]

Reciprocal Arrangements as to Services.—Often the services provided by one local authority may be utilised by another on payment of fees or by reciprocal arrangements. Local authorities, for example, which provide accident ambulances under sect. 50 of the P.H.A. Amendment Act, 1907 (*n*), may allow them to be used by other authorities on such terms and conditions as may be agreed upon. The L.C.C. has made arrangements with extra-metropolitan authorities for the reciprocal use of ambulance services under sect. 2 of the Metropolitan Ambulances Act, 1909 (*o*). Cases have occurred in which an ambulance has been called to the scene of an accident only to find that it is just outside the authority's area and help to an injured person has therefore been refused.

(*k*) 13 Statutes 1126.

(*m*) L.G.A., 1933, s. 111.

(*o*) 11 Statutes 1208.

(*l*) 26 Statutes 366.

(*n*) 13 Statutes 630.

Such a thing should be made impossible by arrangements resembling those of the L.C.C. [689]

Similarly, local authorities may make arrangements for mutual assistance in the provision of fire-engines. Under sect. 33 of the Town Police Clauses Act, 1847 (*p*), a council's fire brigade may operate outside their area, and where sect. 90 of the P.H.A. Amendment Act, 1907 (*q*), has been put into force in a borough or district, the council are specifically empowered to make arrangements for the common use of fire-engines or for mutual assistance in case of fire. Sect. 1 of the Parish Fire-engines Act, 1898 (*r*), empowers a parish council to agree with the council of a neighbouring borough or district for the use of the latter's fire brigade on payment of a retaining fee. For a detailed description of these powers, see pp. 86—88 of Vol. VI. Their effect in case of need will depend largely on the efficiency of the arrangements made between the authorities for prompt action. The statutory powers should not be allowed to lie fallow but should be exercised wherever possible by carefully prepared plans. [690]

Under sect. 25 of the Police Act, 1890 (*s*), police authorities are empowered, in cases of emergency, to strengthen their police force by constables from another force, and an agreement for that purpose may be made either for a particular occasion or as a standing agreement. [691]

Joint Provision of Institutions and User Agreements.—The development of modern methods of transport renders possible a great economy in provision of institutions of all kinds by local authorities. Where previously it was necessary for individual authorities each to provide institutions, often ill-equipped, it is now possible, thanks to the motor ambulance and the telephone, for neighbouring authorities to combine to provide an institution of the optimum size, or alternatively for one authority to provide such an institution and for their neighbours to benefit from it and at the same time support it by means of agreements as to user. Again, overlapping between public and private institutions can be obviated by intelligent co-operation between authorities and private persons and bodies.

Sect. 68 of the L.G.A., 1929 (*a*), gives wide powers to county councils to act along these lines in connection with hospitals for infectious diseases (other than tuberculosis and venereal diseases) provided by the county council and the district councils. Sect. 13 of the same Act (*b*) compels county councils, before providing poor law hospitals, to consult with representatives of the governing body and of the staff of voluntary hospitals as to the accommodation to be provided and as to the use to which it is to be put. Under sect. 64 of the P.H.A., 1925 (*c*), the power of local authorities to enter into agreements with persons having the management of any hospital under sect. 131 of the P.H.A., 1875 (*d*), was extended to enable them to make subscriptions or donations to voluntary hospitals and institutions. [692]

For the purpose of providing asylum accommodation, a local authority is empowered by sect. 242 of the Lunacy Act, 1890 (*e*), to agree to unite with any other local authority or authorities to provide

(*p*) 13 Statutes 604.
(*r*) 10 Statutes 833.
(*a*) 10 Statutes 925.
(*c*) 13 Statutes 1143.
(*e*) 11 Statutes 109.

(*q*) *Ibid.*, 944.
(*s*) 12 Statutes 850.
(*b*) *Ibid.*, 801.
(*d*) *Ibid.*, 673.

and maintain a district asylum. They may also agree to unite with any other local authority or authorities upon such terms as to payment and otherwise as may be thought proper for the joint use as a district asylum of an existing asylum or, if thought fit, for its enlargement. [693]

By sect. 9 of the Inebriates Act, 1898 (*f*), two or more councils of counties or boroughs may combine for the purpose of the establishment and/or maintenance of a reformatory certified or intended to be certified under that Act, and may defray the whole or any part of the expense of detention of any person in any certified inebriate reformatory. By sect. 14 a similar combination may also be made for the establishment of retreats under the Inebriates Acts, 1879 and 1888, as amended by the 1898 Act. [694]

With the approval of the Home Secretary, a local authority may combine with any other such authority in undertaking (or contribute such sums of money upon such conditions as they may think fit towards) the purchase, establishment, building, alteration, enlargement, rebuilding or management of an "approved" school (*g*). If the proposal is to purchase, build, or establish a new school the Home Secretary must satisfy himself that there is a deficiency of approved school accommodation which cannot properly be remedied in any other way. In the event of there being a deficiency of approved school accommodation, it is the duty of every local authority concerned to take, alone or in combination with other local authorities, appropriate steps to remedy the deficiency (*g*). [695]

It is the duty of the council of every county and county borough to provide for their area remand homes which may be situated within or without the area. For this purpose the councils may arrange with the occupiers of any premises for their use, or join with the council of another county or county borough in establishing such homes (*h*). The authority or persons responsible for the management of an institution other than a prison may, subject in the case of an institution supported wholly or partly out of Government funds to the consent of the Government department concerned, arrange with the council of a county or county borough for the use of the institution, or any part thereof, as a remand home upon such terms as may be agreed (*h*). The powers and duties above conferred on local authorities, as respects children, are those of local education authorities for elementary education and, as respects other persons, the powers and duties of councils of counties and county boroughs (*i*). Where the council of an urban district (whether a borough or not) have under the Education Act, 1921, or the Acts repealed by that Act, relinquished in favour of the county council their powers and duties as a local education authority for elementary education such council, for the purposes of the 1933 Act, is deemed not to be a local education authority for elementary education, and their district is to be regarded as part of the area of the county council (*k*). [696]

Joint Action under Miscellaneous Statutes. *Weights and Measures.*—Two or more local authorities may combine, as regards either the whole

(*f*) 9 Statutes 958.

(*g*) Children and Young Persons Act, 1933, s. 80; 26 Statutes 218.

(*h*) Further as to "remand homes," see the 1933 Act, Part IV.; 26 Statutes 216 *et seq.*; and the Remand Home Rules, 1933, S.R. & O., 1933, No. 987.

(*i*) Children and Young Persons Act, 1933, s. 96; 26 Statutes 232.

(*k*) *Ibid.*, s. 96 (1) (b).

or any part of the areas within their jurisdiction, for all or any of the purposes of the Weights and Measures Act, 1878 (*l*), upon such terms and in such manner as may be from time to time mutually agreed upon. Where an inspector (*m*) is appointed under an agreement for such combination he has, subject to the terms of his appointment, the same authority, jurisdiction and duties as if he had been appointed by each of the parties to the agreement. It is obvious that in such cases, if there is no joint committee, care should be taken to define the responsibility of the inspectors to the appointing councils for purposes of discipline and finance. [697]

Land Drainage.—Under the provisions of the Land Drainage Act, 1930 (*n*), drainage districts of two kinds are set up, (1) catchment areas, and (2) other drainage districts either within, subsidiary to, or outside a catchment area. Each drainage district is controlled by a drainage board (in case (1) called a catchment board). Representation is given to county councils and county borough councils, a part of whose area is within the catchment area (*o*), on a catchment board, the general drainage powers of county councils and county borough councils under the Act being contained in Part VI. (*p*). By sect. 39 of the Act, the drainage board of any drainage district, not being a catchment area, may, with the consent of the drainage board of any adjoining drainage district, not being a catchment area, make agreements to execute or maintain works in each other's district on terms to be agreed upon. They may also agree to contribute to the expenses of the works executed or maintained by the authority of any adjoining area (*q*). [698]

Ferries.—Power is given under sect. 1 (3) of the Ferries (Acquisition by Local Authorities) Act, 1919 (*r*), for a local authority to join with any other for the purchase or acceptance, working, maintenance or improvement of a ferry under that enactment. A local authority may also contribute towards the expenses of the purchase or acceptance, working, maintenance, or improvement of a ferry by another local authority. Any difference that may arise between any local authorities who are acting jointly, or jointly bearing any expenses under that subsection, are to be determined by the Minister of Transport, or by an arbitrator appointed by him, and his determination is final and binding. "Local Authority" here means and includes a county council, the mayor, aldermen and burgesses of a county or other borough, and the council of any urban or rural district. Expenses incurred by a local authority under the 1919 Act may be defrayed, in the case of a county council out of the county fund, and in the case of the council of a borough or urban or rural district out of the rate fund (*s*). [699]

Bridges.—By sect. 1 (2) (d) of the Bridges Act, 1929 (*t*), the powers conferred by that Act on a highway authority are exercisable in the case of a bridge (not being a bridge in a county borough, or a bridge in the City of London, or a bridge in a rural district), either by the council

(*l*) S. 52 ; 20 Statutes 382.

(*m*) See title INSPECTORS OF WEIGHTS AND MEASURES.

(*n*) 23 Statutes 529.

(*o*) See title LAND DRAINAGE.

(*p*) 23 Statutes 505.

(*q*) S. 39 ; 23 Statutes 538.

(*r*) 8 Statutes 660.

(*s*) See Part VIII. of the L.G.A., 1933 ; 26 Statutes 404. This Act repealed s. 1 (7) of the Act of 1919.

(*t*) 9 Statutes 268.

of the county in which the bridge is situate, or by the council of the metropolitan borough or urban district in which the bridge is situate, or by such councils jointly (*u*). [700]

Tramways.—Under sect. 17 of the Tramways Act, 1870 (*v*), the Board of Trade may, on a joint application, or on two or more separate applications, settle and make a provisional order, empowering two or more local authorities jointly to construct the whole, or separately to construct parts of a tramway, and to own jointly or separately the whole or parts thereof. All the provisions of the 1870 Act relating to the construction of tramways then apply to the whole or separate parts of such tramway, and the form of the provisional order may be adapted to the circumstances of the case. Agreements for through running can be required by the M. of T. (*w*), and joint working agreements can be made under the Road Traffic Act, 1930, s. 105 (*a*). [701]

Superannuation.—The Local Government and other Officers' Superannuation Act, 1922, may be adopted by any local authority as therein defined (*b*). The Act provides for superannuation schemes for officers and servants in the service of the local authority. No authority may adopt the scheme unless it will apply to not less than fifty officers or servants. By sect. 5 (1) of the Act, however, (1) the council of a county and any local authority whose area is wholly or partly within the county and, (2) any number of local authorities whose areas are wholly or partly in the same county, may combine for the purposes of the Act.

By sect. 5 (3) a local authority to which the Act applies may admit officers or servants (1) of a local authority to which the Act does not apply, where the area of the latter is wholly or partly within the area of the former, or (2) of any undertakers exercising powers within the area of the admitting authority under an Act or order having the force of an Act, to participate in the benefits of the admitting authority's superannuation scheme.

The financial advantages of spreading the area of the scheme over as large a fund and as great a number of claimants as will suffice to average claims are obvious. See title SUPERANNUATION. [702]

Housing.—Where, on application made by one of any local authorities concerned, the Minister of Health is satisfied that it is expedient that any local authorities should act jointly for any purposes of the Act, either generally or in any special case, the Minister may, by order, make provision for the purpose, and any provisions so made have the same effect as if they were contained in a provisional order made under sect. 279 of the P.H.A., 1875, for the formation of a united district, and confirmed by Parliament (*c*). [703]

CO-OPERATION BY LOCAL AUTHORITIES WITH OTHER BODIES.

Housing Associations.—In passing from co-operation between local authorities themselves to co-operation between an authority and a non-governmental body, mention must be made of the exceptional

(*u*) See Vol. II., pp. 252, 253.

(*v*) 20 Statutes 11.

(*w*) M. of T. Act, 1919, s. 5; 3 Statutes 427.

(*a*) 23 Statutes 680.

(*b*) Defined by s. 3 (10 Statutes 563) as the council of a county, county borough, non-county borough, metropolitan borough, urban district or rural district and any other authority within the meaning of the Local Loans Act, 1875 (see s. 34 of that Act; 12 Statutes 253).

(*c*) Housing Act, 1925, s. 112; 13 Statutes 1063.

position of housing associations. Local authorities are empowered to co-operate with such bodies to the full extent of handing over to them many of their housing functions entirely and to promote the formation of and extend or assist such bodies. They may, under sect. 27 of the Housing Act, 1935, make arrangements with housing associations in the fulfilment of their duties under Part I. of that Act or Parts I. and II. of the Housing Act, 1930, and to this end may arrange for the association to provide housing accommodation for persons of the working-classes displaced by clearance schemes, the demolition of insanitary houses, the closing of parts of buildings, or measures taken to abate overcrowding, or to alter, enlarge, repair or improve houses which the authority has acquired, or acquired an interest in, for improving working-class housing conditions. The approval of the Minister is needed, and any grants earned are payable by the Minister to the authority for transfer to the association. [704]

Associations (d).—Associations with which local authorities work in concert may be divided into two classes (1) associations of some particular class of local authorities, (2) associations dealing with some particular object partly or wholly within the jurisdiction of local authorities. The advantages of the first class of these associations are well understood. Besides maintaining the interests of their members they provide an invaluable medium of intellectual co-operation through the pooling of experience. Their corporate knowledge and experience is of the utmost value to the Government and to royal commissions or departmental committees in considering changes in administration. The work of the International Union of Local Authorities through its annual congresses has greatly extended the scope of this particular form of co-operation.

The individual societies in the second class of associations vary greatly in their scope, their connection with local authorities and their influence. Among these, the associations of local government servants have played an important part in the improvement of administration by their work with reference to the training and status of officers. Their work is also well known and appreciated. The advantages of co-operation with the other numerous voluntary societies dealing with objects wholly or partly within the jurisdiction of local authorities are not always fully secured. Many of these associations are able by reason of their specialised study of particular problems to afford valuable assistance to local authorities in matters in which, possibly because they come only infrequently beneath the notice of particular authorities, the local authorities themselves are not able to gather experience, for example, in roadside tree planting. They may also by reason of their ability to call on the services of specialists be able to provide personal services of a quality otherwise difficult to obtain. An example of co-operation of both descriptions is to be found in the action of the Royal Institute of British Architects and of the Council for the Preservation of Rural England in setting up panels of architects with the approval of the M. of H. to advise local authorities as to the preservation of amenities, and the prevention of the disfigurement of the countryside by the erection of buildings constructed of wrong materials, badly designed, or on unsuitable sites. The Peak District Advisory Panel has in particular done useful work. Voluntary

(d) See title ASSOCIATIONS.

societies have often been able to conciliate conflicting interests when local authorities have sought to preserve amenities. For example the Commons, Footpaths and Open Spaces Preservation Society have performed such good offices in connection with open spaces and rights of way, and the S.C.A.P.A. Society have done similar services in connection with the control of advertisements.

The work of the Carnegie Trust in providing libraries is an excellent example of co-operation between local authorities and a private body. [705]

Co-operation with Central Departments.—One of the most remarkable changes in the technique of administration in the last hundred years is that in the conception of the relations between the central departments and local authorities. Under the highly centralised and authoritative régime of the Poor Law Commissioners or the General Board of Health (see title LOCAL GOVERNMENT), the local authority was treated almost as the subordinate of the central department. There is no need to deal here with the method of stimulation by advice and suggestion which has been so largely developed (see, *e.g.* title HEALTH, MINISTRY OF), between Ministries and local authorities. Apart from advice and intellectual assistance, co-operation in action with the central government and local authorities has been developed to an enormous extent. A large proportion of the expenditure of local authorities is now defrayed by the central Government. See title GRANTS. [706]

JOINT BOARDS AND COMMITTEES

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See also titles :

BURIAL AUTHORITIES ;
ELECTRICITY SUPPLY ;
GAS ;
HOSPITAL AUTHORITIES ;
LONDON ROADS AND TRAFFIC ;
METROPOLITAN WATER BOARD ;

POLLUTION OF RIVERS ;
POOR LAW INSTITUTIONS ;
SEWERAGE AUTHORITIES ;
SUPERANNUATION ;
TOWN PLANNING AUTHORITIES ;
WATER AUTHORITIES.

I. INTRODUCTORY

This title contains a summary of the enactments which permit action by local authorities, either by means of the establishment of a joint board or the appointment of a joint committee. Some of these

bodies can more conveniently be dealt with in some other title of this work, in which case the necessary reference is given. [707]

A. Joint Bodies with Independent Financial Powers. *Joint Boards under P.H.As.*—Such a board, being the governing body of a united district formed under sect. 279 of the P.H.A., 1875 (a), may, as indicated on p. 372, *post*, be constituted for the purposes of water supply, sewerage or any other purposes of the Act. These bodies are dealt with, *post*, pp. 372—375. [708]

Joint Boards under sect. 112 of the Housing Act, 1925 (b), constituted by order by the M. of H.; such order has the same effect as a provisional order confirmed by Parliament for the formation of a joint board under the P.H.As. [709]

Joint Port Sanitary Authorities under sect. 287 of P.H.A., 1875, as to which see title PORT SANITARY AUTHORITIES.

Isolation Hospital Committees under sect. 10 of the Isolation Hospitals Act, 1893 (c), as to which see title HOSPITAL AUTHORITIES.

Rivers Pollution Prevention Committees under sect. 14 (3) of L.G.A., 1888 (d), as to which see title POLLUTION OF RIVERS.

Joint Electric Lighting Authorities under sect. 8 of the Electric Lighting Act, 1909 (e), and private Acts; see title ELECTRICITY SUPPLY.

Joint Electricity Authorities under sects. 5, 6 of the Electricity (Supply) Act, 1919 (f), as to which see title ELECTRICITY SUPPLY.

Joint Action by Local Authorities under Mental Deficiency Act, 1913 (g).—The appointment of a joint committee or joint board, with the concurrence of the M. of H., is dealt with *post*, p. 374.

Standing Joint Committees in Counties for Police Purposes under sect. 30 of the L.G.A., 1888 (h), as to which see title STANDING JOINT COMMITTEES and *post*, p. 377.

Joint Committees under sect. 3 of the Poor Law Act, 1930 (i), by order of the M. of H. combining the areas of public assistance authorities; see PUBLIC ASSISTANCE AUTHORITIES and *post*, p. 381.

Joint Gas Authorities.—See title GAS. [710]

B. Joint Bodies without Independent Financial Powers. *Joint Committees under sect. 91 of the L.G.A., 1933 (k)*, and joint committees for parts of parishes under sect. 92 of the same Act. As to these committees, see *post*, pp. 371, 376.

Joint Committees under sect. 53 (2) of the L.G.A., 1894 (l), for the administration of the adoptive Acts, see pp. 331, 332 of Vol. II.

Joint Execution of Works under sect. 285 of the P.H.A., 1875.—Under this section (m) two or more borough or district councils may combine together for the purpose of executing and maintaining any works for the benefit of their respective areas or any parts thereof. [711]

Joint Committees of County Councils.—As to these joint committees, originally set up under sect. 81 of the L.G.A., 1888, see the general provisions of the L.G.A., 1933, as to joint committees, set out later.

(a) 13 Statutes 742.

(c) *Ibid.*, 804.

(c) 7 Statutes 749.

(g) 11 Statutes 100.

(i) 12 Statutes 909.

(l) 10 Statutes 810.

(b) *Ibid.*, 1003.

(d) 10 Statutes 697.

(f) *Ibid.*, 756.

(h) 10 Statutes 708.

(k) 26 Statutes 855.

(m) 18 Statutes 744.

Joint committees of county councils have been set up for the administration of hospitals for infectious diseases and for the purpose of education. [712]

Appointment of M.O.H. for United Districts.—By sect. 112 of the L.G.A., 1933 (n), the M. of H., when on a representation made to him he is satisfied that the appointment of an M.O.H. for two or more boroughs or districts would diminish expense, or otherwise be to the advantage of those areas, may by order unite them for that purpose. The order may contain provisions relating to (i.) the mode of appointment and removal of the officer by representatives of the constituent councils, (ii.) meetings of those representatives, and (iii.) the proportion in which salary and expenses of the officer are to be borne. No borough or urban district with a population of 20,000 or more, and no borough with a separate court of quarter sessions, can be included in such a union without the consent of the council. Whilst an order under this section is in force, no M.O.H. may be appointed for any of the boroughs or districts included in the union, except as an assistant of the M.O.H. (o).

When it is proposed to make an order under this section, the Minister must give not less than twenty-eight days' notice to every council proposed to be included in the union. If they then give notice of objection to the Minister, any order of the Minister including their area in a union must be confirmed by Parliament (p). [713]

Joint Tuberculosis Committees under sect. 5 of the P.H. (Tuberculosis) Act, 1921 (q). As to these, see p. 377, *post*.

Joint Agricultural Committees under sect. 2 of the M. of A. & F. Act, 1919 (r). As to these, see p. 379, *post*.

Joint Library Committees under agreement between library authorities where the Public Libraries Act, 1892 (s), is adopted. As to these committees, see p. 378, *post*.

Joint Action under the Lunacy Acts under sect. 242 of the Lunacy Act, 1890 (a). For such joint action, see p. 374, *post*.

Joint Bodies for Town Planning.—Joint committees for the preparation or adoption of a scheme may be appointed under sect. 4 of the Town and Country Planning Act, 1932 (b), by local authorities or county councils. Further, as to this, see *post*, p. 378, and title TOWN PLANNING. [714]

Joint Education Committees may be constituted under sect. 4 of and para. (2) of Part I. of the First Schedule to the Education Act, 1921 (c). As to these committees, see p. 379, *post*.

Joint Committees under the Diseases of Animals Acts may be formed by agreement under sect. 39 (5) of the Diseases of Animals Act, 1894 (d). See p. 380, *post*.

Joint Local Fisheries Committees under sect. 1 (2) of the Sea Fisheries Regulation Act, 1888 (e). For these bodies, see title SEA FISHERIES.

Joint Committees under sect. 3 of the Light Railways Act, 1896 (f). For the composition, powers and duties of these bodies, see p. 380, *post*. [715]

(n) 26 Statutes 366.

(o) L.G.A., 1933, s. 112 (2); 26 Statutes 366.

(p) *Ibid.*, s. 112 (3).

(r) 8 Statutes 432.

(a) 11 Statutes 100.

(c) 7 Statutes 132, 217.

(e) 8 Statutes 743.

(g) 13 Statutes 972.

(s) 13 Statutes 850.

(b) 25 Statutes 474.

(d) 1 Statutes 410.

(f) 14 Statutes 253.

C. Joint Advisory Committees. (1) *For Town Planning Purposes.*—See TOWN PLANNING.

(2) *Joint Electricity Advisory Bodies* under the Electricity (Supply) Acts, 1919 and 1922, as an alternative to the establishment of a Joint Electricity Authority. See p. 298 of Vol. 5. [716]

II. JOINT BOARDS

These authorities are constituted to exercise for more than one area functions that otherwise would be exercisable separately by each of the constituent authorities. Joint authorities without independent financial powers will be treated under "Joint Committees," *post*. Generally a joint committee possess no power to borrow money, hold land, or sue or be sued as such. On the other hand, a joint board exercise their powers independently of the constituent authorities (see *infra*). A joint board are a body corporate with power to hold lands, borrow money and to issue precepts to the local authorities within the united district.

By sect. 279 of the P.H.A., 1875 (g), the councils of two or more boroughs or districts may apply to the M. of H. for the formation of a united district for (i.) procuring a common supply of water, or (ii.) making a main sewer or carrying into effect a system of sewerage for the common use of the districts or contributory places united, or (iii.) any other purposes of the Act. The M. of H. may by provisional order form such districts or parts of them or contributory places into a united district, and the expenses incurred are a first charge on the rates leviable in the united district. The provisional order requires confirmation by a Bill in Parliament.

The governing body of such a united district is a joint board which is a body corporate. When constituted, the local authorities of the areas included in the united district no longer exercise any function assigned to the joint board by the provisional order (h), unless the Minister, by order, authorises any constituent council to exercise any of the powers of the joint board in their own area concurrently with the joint board (i), but a joint board may delegate the exercise of any of their functions to the local authority of any constituent area (h). Such a joint board consists of *ex-officio* and elected members, as determined by the Minister in the order. The expenses incurred by a joint board are defrayed out of a common fund contributed by the areas concerned in proportion to their rateable values. The joint board issue their precept to each constituent council stating the sum to be contributed by them, and asking that it should be paid within a limited time. Further, under sect. 244 of the P.H.A., 1875 (k), a joint board may borrow money for purposes of services administered by them, on the credit of any fund, applicable by them to the purposes of the Act, or on the security of sewage land and plant. [717]

Application of L.G.A., 1933, to Joint Boards or Committees.—By sect. 293 of this Act (l), where any enactment authorises the formation,

(g) 13 Statutes 742.

(h) Act of 1875, s. 281; 13 Statutes 743.

(i) P.H. (Prevention and Treatment of Disease) Act, 1913, s. 1; 13 Statutes 953.

(k) 13 Statutes 727.

(l) 26 Statutes 461.

by provisional order or order of a joint board or joint committee (*m*), the constituent members of which are councils of counties, boroughs, districts or parishes, for the discharge of any of the functions of those councils, such provisional order or order may apply to the joint board or joint committee, subject to any necessary modifications, any of the provisions of the Act of 1883. But the provisions of that Act (i.) respecting the compulsory acquisition of land, otherwise than by means of a provisional order (*n*), or (ii.) relating to the audit of accounts by district auditors (*o*) unless the conditions indicated in proviso (ii.) to sub-sect. (1) are satisfied, are not to be applied. A board or joint committee existing on June 1, 1934, may apply for the provisional order by which they were constituted to be amended by an order made before June 1, 1936, without the expense of a further provisional order, where any provisions of the P.H.As., 1875 to 1932, the L.G.A., 1894, or the L.G.A., 1929, have been applied to such joint board or joint committee by the provisional order (*q*). [718]

Joint Water Authorities.—For these reference must be made to titles METROPOLITAN WATER BOARD, and WATER AUTHORITIES.

Joint Sewerage Authorities.—See title SEWERAGE AUTHORITIES. The functions of a joint board set up for sewerage purposes are usually limited to the construction and maintenance of main sewers and works of sewage disposal. Sewerage systems of the different districts remain under the control of the local authority. [719]

Joint Hospital Boards.—See pp. 20, 21, *ante*. It should be noted that power is given by sect. 131 of the P.H.A., 1875 (*r*), for two or more local authorities to combine to provide a common hospital. The M. of H. generally advise that when a hospital is to be provided for two or more districts in combination, it should be placed under the care of a joint hospital board formed by provisional order under sects. 279—285 of the P.H.A., 1875 (*s*). [720]

Joint Cemetery Authorities.—Joint cemetery districts may be formed for cemetery purposes under sect. 279 of the Act of 1875. By sect. 2 of the P.H. (Interments) Act, 1879 (*t*), the provisions of the P.H.A., 1875, as to mortuaries are extended to include the acquisition, construction and maintenance of a cemetery. Hence any borough council or district council may provide a cemetery, and if required by the M. of H. must do so (*u*). [721]

Joint Burial Boards.—Where two or more parishes have resolved to provide burial grounds under the Burial Acts (*a*), they may under sect. 23 of the Burial Act, 1852 (*b*), combine to provide one burial ground for the common use of such parishes. The expenses of such

(*m*) As to Joint Committees, see *post*.

(*n*) *I.e.* s. 161 ; 26 Statutes 394.

(*o*) *I.e.* ss. 223—236 ; 26 Statutes 427—433.

(*q*) L.G.A., 1933, s. 293 (2) ; 26 Statutes 461.

(*r*) 13 Statutes 678.

(*s*) See also L.G.A., 1929, s. 63 ; 10 Statutes 925.

(*t*) 13 Statutes 796.

(*u*) See title CEMETERIES.

(*a*) As to such provision, see title BURIALS AND BURIAL GROUNDS.

(*b*) 2 Statutes 197.

joint burial ground are borne by the parishes concerned in proportions agreed upon. Where such a common burial ground is provided, the burial boards of the several parishes act for management purposes as one joint burial board for all the parishes, and have a joint office, clerk and officers, and all the provisions of the Burial Acts apply to them (*c*).

Such a joint burial board are a body corporate, have perpetual succession and a common seal, and have power to hold lands for the purposes of the Burial Acts (*d*). All acts authorised to be done by a burial board with the approval, sanction or authority of the vestry of the parish for which such board is constituted may, where a joint burial board are constituted for more than two parishes, be done with the approval, sanction or authority of the vestries of the majority of such parishes (*e*). By sect. 11 of the Burial Act, 1855 (*f*), burial boards may be appointed (and burial grounds provided) for united parishes, in the circumstances mentioned in that section, which defines the powers of such a board and the manner in which expenses are to be met. The consent of the M. of H. is, however, necessary for the appointment of a burial board under this section (*g*). [722]

Joint Action under Mental Deficiency Acts.—The M. of H., following upon an application made by two or more local authorities, may provide by order for the constitution of a joint committee or joint board for the joint exercise and performance of the duties and powers of local authorities under the Acts (*h*). The order may provide for the manner and proportion in which, and out of what funds or rates the expenses of the joint exercise and performance are to be defrayed. It may also contain such incidental, consequential and supplemental provisions (including provisions adapting any of the provisions of the 1913 Act) as may be necessary for the purposes of the order (*h*); but unless all such authorities agree to the making of the order, it is provisional only, and has no effect unless confirmed by Bill in Parliament (*i*). The order remains in force for the period (if any) named therein: and if none is so named, until it is determined by mutual agreement between the local authorities concerned, with the consent of the M. of H. (*k*). Sect. 285 of the L.G.A., 1933 (*l*), as to the making of provisional orders, applies with the necessary modifications. Every joint committee or joint board established under the Act of 1913 is a body corporate by virtue of sect. 8 of the Mental Deficiency Act, 1927 (*m*). [723]

Joint Action under Lunacy Acts and Mental Treatment Act, 1930.—Local authorities may, with the approval of the Board of Control, agree to unite under sect. 242 of the Lunacy Act, 1890 (*n*), to provide a mental hospital for persons of unsound mind. Under sect. 6 (3) of

(*c*) Burial Act, 1852, s. 23; 2 Statutes 107.

(*d*) *Ibid.*, s. 24; 2 Statutes 108.

(*e*) Burial Act, 1857, s. 1; 2 Statutes 227.

(*f*) 2 Statutes 221.

(*g*) Burial Act, 1857, s. 9; 2 Statutes 231.

(*h*) Mental Deficiency Act, 1913, s. 29 (1); 11 Statutes 177.

(*i*) *Ibid.*, s. 29 (2).

(*k*) *Ibid.*, s. 29 (3).

(*l*) 26 Statutes 456.

(*m*) 11 Statutes 201.

(*n*) *Ibid.*, 100, as amended by s. 14 of the Mental Treatment Act, 1930; 23 Statutes 168.

the Mental Treatment Act, 1930 (o), local authorities may agree to co-operate in exercising the powers conferred by the sub-section as regards the treatment of persons who are mentally infirm. [724]

III. JOINT COMMITTEES

A. Joint Advisory Committees.—(See as to advisory committees in connection with the appointment of justices of the peace, title ADVISORY COMMITTEE.) While the function of many of the joint committees in (B), *post*, is advisory as well as executive the following are specially noted:

Town Planning Joint Committees under the Town and Country Planning Act, 1925 (see title TOWN PLANNING, and "Joint Town Planning Committees," *post*). It would appear that, as was the case with joint committees formed under the Town Planning Act, 1925, these joint committees exercise chiefly advisory powers, while the execution of schemes, as apart from the preparation of plans, is left to the constituent local authorities acting separately. [725]

Joint Housing Committees, under the Housing Act, 1925. By sect. 112 (p), the M. of H. may by order provide for joint action between local authorities, and the appointment of a joint advisory committee could thus be authorised.

London Traffic Advisory Committees.—As to these, see title LONDON ROADS AND TRAFFIC. [726]

B. Joint Committees without Independent Financial Powers. *General Provisions.*—These are contained in the L.G.A., 1933. Sect. 91 of the Act (q) empowers the council of a county, borough, district or parish to concur with any one or more other such councils in appointing from amongst their respective members a joint committee for any purpose in which they are jointly interested, and to delegate to the committee, with or without restrictions or conditions, as they think fit, any functions of the council relating to the purpose for which the joint committee is formed, except the powers of levying, or issuing a precept for, a rate, or of borrowing money. Where a council appoint a joint committee for the discharge of functions under an enactment, and that enactment contains any special provisions respecting the constitution and functions of that committee (including any provisions with respect to the appointment of persons who are not members of the council) those provisions are to apply to the constitution and functions of the joint committee with such modifications (if any) as the case may require.

The appointing councils fix (1) the number of members, (2) the term of office, and (3) the area within which the joint committee are to exercise their authority (r).

Any member of a joint committee appointed under sect. 91, who was a member, at the time of his appointment, of the council by whom he was appointed must, upon ceasing to be a member of that council, also cease to be a member of the joint committee, unless he has been

(o) 23 Statutes 161.

(q) 26 Statutes 355.

(r) Act of 1933, s. 91 (2); 26 Statutes 355.

(p) 13 Statutes 1063.

re-elected a member of the council not later than the day of his retirement (s).

Sect. 91 does not, however, authorise the appointment of a joint committee for any purpose for which the appointing councils are authorised or required to appoint a joint committee by any other enactment for the time being in force (t). [727]

Joint Committees for Parts of Parishes.—By sect. 92 of the L.G.A., 1933 (u), the requirements made in the case of committees of a parish council for a part of a rural parish (a) may also be made in the case of a joint committee for parts of parishes, and any such requirement must be duly complied with by the parish councils concerned at the time of the appointment of such committee (b). [728]

Expenses and Accounts.—The expenses incurred by a joint committee appointed under the L.G.A., 1933, are to be paid by the appointing councils in agreed proportions. Should there be disagreement, then, in any case in which a county council or county borough council are an appointing authority, and in any case in which appointing authorities include the councils of boroughs or districts situate in different counties, the difference is determined by the M. of H.: in other cases by the county council (c). Accounts are to be made up yearly to March 31, and where the appointing authorities consist only of the councils of boroughs, and the accounts of the joint committee are not subject to audit by a district auditor under the provisions of Part X. of the Act, they are to be audited by the auditor or auditors of the accounts of such one of the appointing authorities as may be agreed upon (e). [729]

Disqualification for Membership.—Persons who are disqualified from being elected or being members of a local authority are disqualified from representing that authority on a joint committee appointed by agreement between that authority and other local authorities (d), but a person is not disqualified from being a member of an education committee (e) or committee appointed for the care of the mentally defective (f), or a committee appointed under sect. 15 of the Public Libraries Act, 1892 (g), by reason only of his being a teacher, or holding any other office in a school or college which is aided, provided or maintained by the local authority appointing the committee (h). [730]

Disability for Voting on Account of Interest in Contracts, etc.—Sect. 76 of the L.G.A., 1933, is applied by sect. 95 of that Act (i) to members of a joint committee appointed by agreement between local authorities,

(s) Act of 1933, s. 91 (3); 26 Statutes 355.

(t) Thus s. 91 does not apply to the standing joint committee under s. 30 of the L.G.A., 1888 (10 Statutes 708).

(u) 26 Statutes 356.

(a) L.G.A., 1933, s. 89; 26 Statutes 354.

(b) As to the obligation on the councils concerned to defray the expenses of the committee, see *R. v. Plymouth Corpn.*, [1896] 1 Q. B. 153; 25 Digest 55, 430; and *R. v. Yorkshire (N. R.) County Council*, [1896] 1 Q. B. 201; 25 Digest 53, 432.

(c) L.G.A., 1933, s. 93; 26 Statutes 356.

(d) *Ibid.*, s. 94. See also *ibid.*, s. 59, as to disqualifications.

(e) Education Act, 1921, s. 4; 7 Statutes 132. See title EDUCATION COMMITTEE.

(f) See under Mental Deficiency Acts, *ante*, p. 374.

(g) 13 Statutes 856.

(h) As to disqualification of members of a local authority, see s. 59 of the L.G.A., 1933; 26 Statutes 334, and as to proceedings in respect of disqualification s. 84 of the same Act; 26 Statutes 350.

(i) 26 Statutes 346, 357.

whether appointed under Part III. of that Act, or under any other enactment, and as respects members of a joint committee, references in sect. 76 to meetings of the joint committee are substituted for references to meetings of the local authority, and references to the clerk of the joint committee for references to the clerk of the authority.

Sect. 76 is based upon recommendations of the Royal Commission on Local Government, and its effect is discussed on pp. 23—25 of Vol. IV. It should be noted that, not only must an interested member refrain from discussing or voting on a question, but he must disclose the fact that he has a pecuniary interest. The clerk must record particulars of any such disclosure, and also of any general notice of disclosure given under sub-sect. (4). The importance of the record book is therefore obvious, as the disclosure may be made verbally at a meeting of the joint committee. [731]

Proceedings of Joint Committees.—Local authorities concurring in the appointment of a joint committee under the Act of 1933, or any other enactment, may (k) make, vary and revoke standing orders with respect to quorum, proceedings and place of meeting of the joint committee, but subject to any such standing orders these matters are to be determined by the joint committee. The person presiding at a meeting of a joint committee has a second or a casting vote (l). [732]

C. Various Joint Committees. *Standing Joint Committees* for police and other purposes may be appointed under sect. 30 of the L.G.A., 1888 (m). The standing joint committee consists as to one-half of justices of the peace appointed by quarter sessions and as to the other half of members of the county council appointed by that council, and they exercise the functions of quarter sessions and of petty sessions, in respect of the county police, buildings for the administration of justice, and clerks to justices. See title **STANDING JOINT COMMITTEE**.

Joint Committees of County Councils.—Among these are included the following joint committees which are dealt with in other titles: Sea Fishery Committees (see title **SEA FISHERIES**), Rivers Pollution Committees (see title **POLLUTION OF RIVERS**), Joint Vagrancy Committees (see title **JOINT VAGRANCY COMMITTEES**), and Town and Country Planning Committees (see title **TOWN PLANNING AUTHORITIES**, and *post*, p. 378). [733]

Joint Tuberculosis Committees.—To facilitate co-operation between county councils and county borough councils in the exercise of powers for the treatment of tuberculosis, the M. of H. may, by order, subject to the consent of the councils concerned, provide by the constitution of joint committees (or otherwise) for the joint exercise of all or any of the powers possessed by them in that connection (n). Any order so made may provide how, and in what proportion, and out of what fund or rate, the expenses incurred by such councils are to be paid, and may contain such further provisions as appear necessary for the purposes of the order. Such a joint committee are a body corporate by such name as the order may direct, and have a common seal, and may hold land for the purpose of their powers and duties without licence in mortmain (n). [734]

(k) Act of 1933, s. 96; 26 Statutes 337.

(l) See also s. 76 (9) (standing orders as to exclusion of a member) which extends both to committees and joint committees.

(m) 10 Statutes 708.

(n) P.H. (Tuberculosis) Act, 1921, s. 5; 13 Statutes 972.

Joint Library Committees.—Where the Public Libraries Act, 1892, is adopted for two or more neighbouring boroughs or urban districts, the library authorities may by agreement combine for any period for the purposes of that Act, and the expenses entailed are defrayed by the constituent authorities in agreed proportions (*o*). A joint committee may be formed, the members of which are appointed by the combining authorities in agreed proportions, but need not be members of those authorities. Such a joint committee has such of the powers of a library authority under the Act of 1892 as the combining authorities agree to confer upon them, except the power of borrowing money (*p*).

Where also the Act of 1892 is adopted for two or more neighbouring rural parishes, the parish councils of those parishes may by agreement combine for any period for the purpose of carrying the Act into execution, and expenses are defrayed by the parishes in agreed proportions (*q*). Each of the combining parishes was to appoint not more than six public library commissioners, but it is believed that no such body of commissioners exists. It is doubtful if the power conferred by sect. 10 of the Act of 1892 (*r*), to annex a parish to an adjoining library district and appoint commissioners, is ever exercised.

The library authorities of two or more library districts may agree to share the cost of the purchase, erection, repair and maintenance of any library building in one of those districts, and also the cost of the purchase of books and newspapers for such library and all the expenses connected with the same (*s*). They may also agree as to the management and use of the library, and as to the interchange, hire and use of books and newspapers belonging to such authorities respectively (*s*). This is one of the instances in which the power in sect. 91 of L.G.A., 1933, to appoint a joint committee could be utilised. [735]

Joint Town Planning Committees.—Under the Town and Country Planning Act, 1932 (*t*), two forms of committees may be set up, which should be briefly mentioned here. By sect. 3 (1) of the Act two or more local authorities or county councils, desirous of acting jointly in the preparation or adoption of a scheme, may appoint a joint committee and delegate to this joint body any powers for that purpose other than the power of borrowing money or levying a rate. Every member of the joint committee must be a member of a constituent authority, but the same person may be appointed to represent two or more authorities (sect. 3 (2)). The co-optation of additional members is permissible, but at least three-fourths of the members must be persons appointed by the constituent councils (sect. 3 (4)). Such a joint committee can appoint sub-committees. Further, as to these joint committees, see title TOWN PLANNING AUTHORITIES.

Apart from the above, if it appears to the M. of H. that two or more local authorities or county councils should act jointly in the preparation or adoption of a scheme, he may, by order, at the request of one or more of these authorities, provide for the constitution of a joint committee (*u*). Such committees have no power to borrow money or levy a rate, and before making the order the Minister, unless all the authorities affected assent to the making of it, must cause a local inquiry to be held (*u*).

(*o*) Public Libraries (Amendment) Act, 1933, s. 4; 13 Statutes 861.

(*p*) *Ibid.*, s. 4 (2).

(*q*) Act of 1892, s. 9; 13 Statutes 853.

(*r*) Public Libraries Act, 1901, s. 5; 13 Statutes 891.

(*r*) 13 Statutes 854.

(*s*) 25 Statutes 470.

(*u*) Act of 1932, s. 4; 25 Statutes 474.

See, further, as to these joint committees, which are largely advisory, title TOWN PLANNING AUTHORITIES.

By sect. 53 of the Town and Country Planning Act, 1932 (a), the term "joint committee" means one appointed under sect. 3 or sect. 4 of that Act or under any repealed enactment relating to town-planning, and thus includes a joint committee appointed under the repealed Town Planning Act, 1925. [736]

Joint Education Committees.—These may either be constituted by the education scheme approved under sect. 4 of the Education Act, 1921 (b), or appointed by the councils concerned under sect. 6 of the Act (c). This section provides that for the purpose of performing any duty or exercising any power under the Act, a council having powers under the Act may *inter alia* provide (1) for the appointment of a joint committee or a joint body of managers, (2) for the delegation to that committee or body of any powers or duties of the councils (other than the power of raising a rate or borrowing money), (3) for the proportion of contributions to be paid by each council, and (4) for any other matters which appear necessary for carrying out the arrangement. An arrangement establishing a joint committee or a joint body of managers must provide for the appointment of at least two-thirds of the members by councils having powers under the Act, and may provide either directly or by co-optation for the inclusion of teachers or other persons of experience in education and of representatives of universities or other bodies (d).

It is the duty (e) of the local education authority for elementary education so to exercise their powers as to make or secure adequate and suitable arrangements for co-operating with local education authorities for higher education in matters of common interest; particularly in respect of the preparation of children for further education in schools other than elementary, and their transference at suitable ages to such schools, and of the supply and training of teachers. As to adult education, the final report of the Adult Education Committee of the Ministry of Reconstruction, 1918, recommended the formation of an Adult Education Joint Committee, which should co-opt representatives of Universities, etc., and receive applications for the provision of adult classes, and appoint suitable lecturers. The Adult Education Committee formed by the Board of Education in 1921 was intended, *inter alia*, to provide for co-operation among local education authorities and local voluntary organisations concerned with adult education. Joint committees may also be appointed for the management and control of (1) mentally defective schools, (2) epileptic schools, and (3) approved schools. Councils of counties, boroughs and urban districts have combined for these purposes. [737]

Joint Agricultural Committees.—Sect. 2 (1) of the M. of A. & F. Act, 1919 (f), provided for the establishment of a Council of Agriculture for England and a similar body for Wales. These two bodies may from time to time by agreement act together as one council. The section further established a Joint Advisory Committee for England

(a) 25 Statutes 520.

(b) 7 Statutes 132. See also para. (2) of Part I. of the First Schedule to the Act; 7 Statutes 217.

(c) 7 Statutes 133. As to the establishment of a "federation" under the Act, see s. 6 (2).

(d) As to the disqualification of a teacher in a school or college, see *ante*, p. 376.

(e) Act of 1921, s. 8; 7 Statutes 134.

(f) 3 Statutes 452.

and Wales. A scheme of the M. of A. may, under sect. 7 (6) of the Act (g), provide for a joint agricultural committee of councils formed by a combination of counties or county boroughs, or parts thereof.

[738]

Joint Committees under Diseases of Animals Acts.—Under sect. 39 (5) of the Act of 1894 (h), local authorities may by agreement, out of their respective bodies, appoint a joint committee consisting of such number of members with such tenure of office as they may determine, and assign to the committee the whole or parts of the districts of the constituent authorities as the authorities may determine, and delegate to the joint committee within their district the whole or any part of the powers of a local authority. The Act of 1894, and any order of the M. of A., then takes effect as if such district was the district of a local authority and the joint committee were a local authority within the meaning of the Act (h). Expenses are apportioned in proportion to the rateable values of such areas, and paid out of the local rates of the constituent authorities (i). Such an agreement is not valid unless approved by the Minister (k). "Powers" includes all powers, duties and obligations exercisable by or imposed on a local authority or its officers under or by the Act, or any order of the Minister, except the power of making a rate (l). [739]

Joint Local Fisheries Committees (m).—See title SEA FISHERIES.

Joint Committees under Light Railways Act, 1896.—By sect. 17 of this Act (n), the councils of any county, borough or district, were empowered to appoint a joint committee for the purpose of any application for an order authorising a light railway, or for the joint construction or working of a light railway, or for any other purpose in connection with such a railway for which it was convenient that those councils should combine. This section has now been repealed by the L.G.A., 1933, and replaced by sect. 91 of that Act, as to which see *ante*, p. 375. Orders for the construction of light railways are now rarely obtained. [740]

Joint Vagrancy Committees (o).—See that title.

Joint National Health Insurance Committees.—By sect. 48 of the National Health Insurance Act, 1924 (p), it is provided that one-fifth of the members of an insurance committee under that Act shall be appointed by the council of the county or county borough and of these two at least shall be women. By sect. 48 (7) any insurance committee may, and if so required by the Minister shall, combine with any one or more other insurance committees for all or any of the purposes of the Act, and where insurance committees so combine, the provisions of the Act are to apply with such necessary adaptations as may be prescribed. Further, as to this, see title NATIONAL HEALTH INSURANCE COMMITTEES. By sect. 88 of the same Act (q) there was set up a National Health Insurance Joint Committee consisting of the Minister as chairman, the Secretary for Scotland, the Minister of Labour for Northern Ireland, and one person appointed by the Minister with special knowledge of national

(g) 3 Statutes 454.

(i) Act of 1894, s. 39 (6).

(l) *Ibid.*, s. 39 (8).

(m) Sea Fisheries Regulation Act, 1888, s. 1 (2); 8 Statutes 743.

(n) 14 Statutes 259.

(o) Poor Law Act, 1930, s. 3; 12 Statutes 969.

(p) 20 Statutes 511.

(q) *Ibid.*, 546.

(h) 1 Statutes 410.

(k) *Ibid.*, s. 39 (7).

health insurance in Wales. The procedure, powers and duties of this body are controlled by the National Health Insurance (Joint Committee) Consolidated Regulations (r). [741]

Joint Committees under Poor Law Act, 1930.—By sect. 3 of this Act (s) two or more councils, whether of counties or county boroughs, are authorised to combine for any purpose in connection with their functions under the Act, and the M. of H., after application made to him, may make an order for combining the areas of the councils. The Minister may also, where it appears to him that such a combination would tend to diminish expense, make an order for a combination without an application, but, unless all the councils concerned consent, a local inquiry must be held by the Minister. The order may establish a joint committee of the councils, define their functions and regulate their election, meetings and business, the mode of defraying expenses and any other matters that appear proper or necessary (sect. 3 (4)). A council included in such a combination cease (save as otherwise provided by the order) to exercise any functions vested by the order in the joint committee (sect. 3 (5)). The order may also contain any incidental, consequential or supplemental provisions as may appear necessary or proper for the purposes of the order. The provisions of sect. 91 of the L.G.A., 1933, as to the appointment of joint committees, do not apply to a joint committee so formed. [742]

Public Baths and Washhouses.—Sect. 19 of the Baths and Washhouses Act, 1846 (t), provides for parishes not in a borough combining, with the approval of the M. of H., for the execution of the Act. Instead of attempting to adapt this section to present-day conditions, it would be preferable to appoint a joint committee under sect. 91 of the L.G.A., 1933 (u). [743]

Open Spaces, Parks and Pleasure Grounds.—By sect. 16 of the Open Spaces Act, 1906 (a), two or more local authorities may combine for the purpose of jointly carrying out the provisions of this Act, that is to say, the acquiring, management, control or maintenance of any open space or closed burial ground. By sect. 14 of the same Act a county council may acquire, lay out, and maintain lands to be used as public walks or pleasure grounds and may also support or contribute to the support of public walks, etc., provided by any person. A combination in such a case is rendered possible by sect. 16 (see titles OPEN SPACES and PUBLIC PARKS). The powers and duties of local authorities under enactments relating to parks and pleasure grounds may be exercised by a joint committee appointed by the authorities under sect. 91 of the L.G.A., 1933. Thus Gunnersbury Park is managed by a joint committee of borough councils.

By sect. 89 of that Act (b), where a parish council have any functions in relation to a recreation ground held for the benefit of a part only of the parish, and that part of the parish has a defined boundary, the council must, if required by a parish meeting held for that part of the parish, annually appoint a committee, consisting of members of the council and partly of other persons representing the said part of the parish, to discharge such functions. [744]

(r) S.R. & O., 1931, No. 713.

(s) 12 Statutes 969.

(t) 13 Statutes 524.

(u) See title ADAPTIVE ACTS, Vol. I., p. 103.

(a) 12 Statutes 390.

(b) 26 Statutes 354.

IV. OFFICERS OF JOINT BOARDS AND COMMITTEES

The appointment and duties of the officers and staff necessary for the adequate discharge of the functions of a joint body are provided for, where a joint board or joint committee are appointed under a provisional order or order, by the terms of the order. Where the joint committee are appointed by agreement between local authorities under statutory powers (adoptive or otherwise), the mode of appointment of the necessary officers and staff is a matter for agreement between the combining authorities. An officer of a joint committee is disqualified for membership of any of the constituent authorities (c). As to the law and practice dealing with the pensioning of officers, staff, and employees of local authorities, see title SUPERANNUATION. [745]

London.—See *ante*, pp. 362, 365, and p. 282 of Vol. III.

(c) *Greville-Smith v. Tomlin*; [1911] 2 K. B. 9; 33 Digest 10, 14.

JOINT ELECTRICITY AUTHORITY

See ELECTRICITY SUPPLY.

JOINT GAS AUTHORITIES

See GAS.

JOINT HOSPITAL COMMITTEE

See HOSPITAL AUTHORITIES.

JOINT POOR LAW COMMITTEES

See also titles : JOINT VAGRANCY COMMITTEES.
JOINT BOARDS AND COMMITTEES ;
PUBLIC ASSISTANCE.

The existing law on this subject is contained in sect. 3 of the Poor Law Act, 1930 (*a*), which is a re-enactment of similar provisions in sect. 3 of the L.G.A., 1929 (*b*), and supersedes that section in so far as it relates to poor law functions. But hitherto the only joint poor law committees established have been joint vagrancy committees, and any such joint poor law committee would be governed by provisions similar to those applying to joint vagrancy committees (for which see that title). [746]

A joint poor law committee may be formed by order of the M. of H. where any two or more councils, whether councils of counties or county boroughs, consider it expedient that the areas of the councils should be combined for any purpose connected with the administration of their poor law functions. If the councils are of this opinion no local inquiry is necessary.

Where it appears to the Minister that a combination of the areas of any two or more councils, whether councils of counties or county boroughs, for any purposes connected with their poor law functions, would tend to diminish expense or would otherwise be of public or local advantage, the Minister may make an order for the purpose (*c*). But before an order can be made in these circumstances a local inquiry must be held by the Minister unless all the councils whose areas are to be combined consent to the combination.

By sect. 3 (*d*), the order of the Minister must define the functions of the joint committee and regulate the election, meetings and business of the joint committee, the mode of defraying their expenditure, and any other matter which it appears necessary or proper to regulate for bringing the order into effect. (See title JOINT VAGRANCY COMMITTEES.) The effect of such an order is to confer on the joint committee certain of the functions which would otherwise be discharged by the constituent public assistance authorities. [747]

(*a*) 12 Statutes 969.

(*c*) Act of 1930, s. 3 (*2*) ; 12 Statutes 970.

(*b*) 10 Statutes 884.

JOINT SEWERAGE AUTHORITIES

See SEWERAGE AUTHORITIES.

JOINT VAGRANCY COMMITTEES

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See also titles :

CASUALS ;
JOINT BOARDS AND COMMITTEES ;
JOINT POOR LAW COMMITTEES ;

PUBLIC ASSISTANCE ;
VAGRANCY.

Preliminary.—The existing law on this subject is contained in the Poor Law Act, 1930 (*a*), and the Public Assistance (Casual Poor) Order, 1931 (*b*), but as the main provisions of that order have been referred to in the title CASUALS it will only be necessary here to mention a few requirements of the order. The Act of 1930 and this order will respectively be referred to in this article as “the Act” and “the 1931 order.”

At the time of the transfer of poor law functions from the boards of guardians on April 1, 1930, there were seventeen statutory combinations for dealing with vagrancy, whilst voluntary committees with fewer powers existed in many other counties. The transfer itself effected a material widening of the area for dealing with vagrancy, in so far as it substituted a whole county for a number of individual poor law unions or for a combination covering less than the whole area of the county. But the problem presented in county boroughs made it most desirable to set up areas at least as wide as a large geographical county, while it was evident that it would be a matter for regret if the area of any existing combination was diminished.

During the debates on the Bill for the L.G.A., 1929, members of all parties expressed themselves in favour of wide statutory combinations covering the whole country, and sect. 3 of that Act (*c*) (now replaced by sect. 3 of Poor Law Act), provided for the making of the necessary orders by the M. of H. either on the application of the authorities concerned, or in default of such application after a local inquiry.

It was not possible before April 1, 1930, for the Minister to make orders to cover the whole country. Sufficient applications were, however, received for sixteen statutory combinations, comprising in

(a) 12 Statutes 968—1052.

(b) 24 Statutes 319.

(c) 10 Statutes 884.

all thirty-six counties and sixty-three county boroughs, to be brought into force on April 1, 1930. Additional joint vagrancy committees were afterwards established. By the autumn of 1935 there were twenty committees covering fifty-seven counties and eighty-three county boroughs.

The orders made by the Minister differ in the degree of control placed in the hands of the joint committee, in the basis of apportioning expenses, and in the period of the operation of the order. For instance, of the sixteen orders which operated on April 1, 1930, ten apportioned expenses on the basis of rateable value, five on an arbitrary percentage, and one on population. Seven of these orders had no time limit while the remainder had time limits of seven years or less. [748]

Valuable work is done by the joint vagrancy committees in improving administration, closing redundant wards and increasing and improving the accommodation provided at the wards which remain open, thus developing the plan suggested in the report of the Departmental Committee on the Relief of the Casual Poor (*d*), that properly equipped casual wards should be provided only along clearly defined routes. In many joint committee areas, arrangements have been made for spreading over the whole of the combined area the cost of necessary extensions and improvements as well as the cost of maintaining casual wards and casuals. In at least one area difficulties have arisen, owing to the order creating the joint committee having provided that the burden of capital expenditure in connection with any particular ward should be pooled only with the concurrence of the constituent councils. This has caused difficulty and delay by the failure of some constituent councils to agree to the arrangement.

Some of the joint committees cover a smaller area and have been given less power than the Minister would have wished, but the combinations were voluntarily formed and the Minister was anxious to allow local authorities the widest possible discretion in the administration of their vagrancy functions. There are now only a very few councils who have been unable to agree to enter into any existing combination. [749]

General Outline.—Each joint vagrancy committee is established by an order of the M. of H. under sect. 3 of the Act of 1930, which is referred to *ante*, on p. 383. The powers of the various committees vary as it has been the practice of the Minister to allow considerable latitude to councils in settling among themselves the details of the scheme to be applied to a joint area, subject to the acceptance of certain general principles. While, therefore, the main principles common to all orders are referred to in this article it does not follow that all of them necessarily apply to every combination.

The date on which an order comes into operation is fixed by the order, but for the purposes of the preliminary proceedings and those relating to the election of the first members of the joint committee the order operates as from such earlier date as may be necessary. A joint committee of the combined councils is constituted and usually named "The Joint Vagrancy Committee" (*dd*).

At the end of this title is a list of the joint committees in England and Wales and the local government areas over which each has control.

Provision is usually made for the exclusion by the Minister of any

(*d*) 1930, Cmd. 3640.

(*dd*) Occasionally the nomenclature is varied, e.g. in the County of Yorkshire the Joint Committee is referred to as "The Yorkshire Casual Poor Assistance Authority."

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of the combined areas after the expiration of six months from the date on which the council of that area gives notice to the Minister and to the joint committee of their desire to be so excluded, or for the reinstatement of any area so excluded, or the extension of the operation of the order so as to include any other area adjoining any of the combined areas on an application from the council of such area and from the joint committee for its reinstatement or inclusion.

The recent circular of the M. of H. (e) to public assistance authorities contains a variety of recommendations with regard to the work of joint vagrancy committees. It deals with the furnishing of annual reports, and matters concerning children in casual wards, and mentions the proposals of the Minister to compile a register of children relieved as casuals in England and Wales. A form is printed of the annual report to be furnished by each joint committee, containing certain statistics and deals with the classification, for the whole area of each committee, of casuals relieved, according to age and sex, medical attention returns, discharges, remedial work, number of casuals prosecuted, with particulars of the nature of offences and the results of trials, and lastly a statement of accounts for the year. The report is to include a reference to any action taken under the provisions of the Children and Young Persons Act, 1933. [750]

Composition of Joint Committee.—The representation of the various councils is often mutually agreed between them before the order is made. Whether there has been an agreement or not representation may be determined by the Minister. Rateable value and population are factors taken into consideration in determining the basis of representation, but there is no definite rule as to the basis.

As soon as practicable after the issue of a new order and annually thereafter each of the councils combined in the area must elect from their own body the number of members of the joint committee assigned to them by the order. It is usual for a council to be empowered to nominate from their own body a person, to act on behalf of a member of the joint committee appointed by the council, at any meeting of the joint committee at which that member is unable to be present. Some orders also definitely empower the clerk and any other authorised officer of a council to attend meetings of the joint committee or their sub-committees.

A member of the joint committee who ceases to be a member of the council by whom he was elected thereupon ceases to be a member of the joint committee, unless on or before the day on which he goes out of office he has been re-elected a member of the council. It is usual for provision to be made that any casual vacancy in the committee arising more than a specified period (usually one month) before the ordinary date for the election of a new committee shall be filled by the election of a new member by the council for the area in respect of which the vacancy arises. The person so elected would hold office during the remainder of the term of office of the person whose place he fills.

The proceedings of the joint committee are not to be invalidated by any vacancy in their number or by any defect in the election or qualification of any member of the committee. [751]

Meetings and Proceedings.—The meetings and proceedings of a joint committee are governed by rules set out in the schedule to the order constituting the committee. It is usual for the joint committee to be required to hold at least four quarterly meetings in every year.

(e) Circular 1472A, dated April 5, 1935.

The committee must make regulations with respect to the summoning, notice, place, management and adjournment of such meetings, and generally with respect to the transaction and management of their business. A quorum is usually prescribed, and provision made for the appointment annually of one of the members as chairman and another member as vice-chairman. [752]

Powers and Duties of Joint Committee.—As already explained the powers and duties of a joint committee depend on the precise terms of the order establishing the committee. Without referring to any particular order it is not possible, therefore, to state definitely the position in any particular area, but certain general provisions are usually included in all such orders and the following remarks with regard to specific powers may be taken as applying generally, if not necessarily uniformly, throughout the country.

For the purposes of the order, such of the provisions of the Act and of the orders and regulations of the Minister, as are applicable to a council in their capacity as a poor law authority, are applied to the joint committee, so far as they are consistent with the order, as if that committee were a council of a county or county borough exercising poor law functions and as if the combined areas were the area of the council. But the order also contains a saving for the powers and duties of the constituent councils except so far as they are being exercised or discharged by the joint committee. [752A]

Reception, etc., of Casuals.—A joint committee must arrange with the several constituent councils as to the reception and maintenance of casuals in the various casual wards. The committee contribute normally at a flat uniform nightly rate in respect of the maintenance of each casual. Arrangements are also to be made for the transfer to an appropriate institution of any sick, aged or infirm casual. The contribution towards the cost of the maintenance of a transferred casual in a municipal or county hospital, or public assistance institution, is usually made at a uniform daily rate. The payments may be on some other basis such as a proportion of the actual cost of maintenance. This procedure would similarly apply to the transfer of a casual to a hospital not maintained by a local authority.

Where a constituent council have exercised the powers of parental control conferred by sect. 52 of the Act (f) the joint committee may agree to pay the cost of maintenance of any child casual or a contribution towards it during such time as the resolution under sect. 52 is in force. The joint committee may also pay the cost of removal of any casual to his place of settlement. The provision and supply of mid-day meals to casuals at such places as may be considered advisable is sometimes arranged by the joint committee.

Nothing in the order constituting a joint committee relieves any of the constituent councils from any of their obligations with reference to the relief of casuals except in so far as such obligations have been undertaken by the joint committee. [753]

Rules for Discharge of Casuals.—Under Art. 7 of the 1931 order (g), a joint committee may with the approval of the Minister make rules permitting the discharge of a casual before the morning of the second day following his admission in the case of casuals of a particular class. A rule has been adopted by certain authorities to the effect that an inmate of a casual ward should be allowed to discharge himself earlier,

(f) 12 Statutes 994.

(g) 24 Statutes 320.

if satisfactory evidence of an offer of employment is produced, or upon production of satisfactory evidence of an appointment or interview the keeping of which is deemed to be in the public interest. [754]

Medical Inspection.—Many joint committees have supplemented the medical inspection of casuals provided for in Art. 12 of the 1931 order (h), so as to ensure that the great proportion of casuals using the wards throughout the country are examined. A joint committee have no power to give directions in this matter but in many cases the constituent councils have agreed to arrange for the medical examination to be undertaken on a uniform date prescribed by the joint committee, although in some quarters the view is held that a uniform date for the medical examination of casuals is likely to destroy the value of the examination as it is believed that such value lies largely in the unexpectedness of the examination. [755]

Tasks of Work.—A joint committee may make representation to the Minister as to the provision of additional tasks to those prescribed by Art. 10 and Sched. II, to the 1931 Order (i). [756]

Domestic work in and about the casual wards including the washing and cleaning of clothing, bedding, crockery, knives, forks and spoons and the carrying of such articles from place to place in accordance with instruction, has been prescribed in certain areas. [757]

Begging.—It is a function of the joint committee to assist by public notice and otherwise in the repression of begging and sleeping out. In discharging this function some vagrancy committees have usefully co-operated with the public authorities. [758]

Subscriptions.—A joint committee are usually given powers similar to those conferred on a public assistance authority, by sect. 67 of the Act (k), to contribute by way of annual subscription towards the support and maintenance of any institution which appears to the joint committee to be calculated to render useful aid in the administration and relief of casuals. The approval of the Minister must be obtained. It is under this provision that a joint vagrancy committee may subscribe to the funds of an organisation which has established a hostel for the training and rehabilitation of young casuals. See p. 447 of Vol. II. [759]

Number and Situation of Casual Wards.—An important function of the joint committee under the order constituting them is to determine from time to time, subject to the sanction of the Minister, the number and situation of the casual wards in the combined areas which shall remain open for the reception and maintenance of casuals. In conjunction with the appropriate constituent council the joint committee may also decide to close a casual ward subject to the sanction of the Minister.

The order constituting the joint committee usually enables a committee to provide, equip and manage premises for the purpose of providing accommodation for casuals. It is more usual, however, for the joint committee only to accept financial responsibility for the erection of a new building, or structural alterations to an existing building, and the acquisition of a site if a suitable site is not already owned by the council concerned, but for the council to be responsible for the primary cost of equipping and maintaining the wards. In some areas, it is necessary for the joint committee to consult the several councils before exercising such powers, and in others the joint committee may only act with the consent of a majority of the constituent councils. But in certain areas the consent of each individual council must be

(h) 24 Statutes 321.

(i) *Ibid.*, 321, 323.

(k) 12 Statutes 1001.

obtained before the joint committee can incur capital expenditure in connection with any casual ward in their area. Such a stipulation considerably restricts a joint committee in their activities for the provision of approved casual ward accommodation. [760]

Expenses of Members.—Under their order of constitution, provision is usually made allowing the reasonable expenses of members in attending meetings of the joint committee or their sub-committees, to be defrayed. In some areas the joint committee are allowed to defray the expenses, and in others the constituent councils defray these expenses. The expenses of a member of the joint committee in travelling by direction of the council for the purpose of carrying out any inspection necessary for the discharge of the committee's functions may be paid. Where a conference of joint committees is held, it is customary, but not the universal practice, for the joint committee to be empowered to pay their reasonable share of the expenses of the conference, and of the attendance of their representatives. [761]

Contracts.—All contracts and agreements made by the joint committee must be signed and sealed on their behalf by the presiding chairman and by two other members of the joint committee, and also attested by the clerk of the joint committee. [762]

Audit.—Provision is made in the order of constitution for the accounts of the joint committee being audited by the district auditor in like manner as the accounts of a county council. Six weeks after receiving the district auditor's report the joint committee must send to its constituent authorities a copy of the report and of the financial statement (*aa*). [763]

Expenses of Joint Committee.—A constitution order also directs a fund to be established, called the Joint Fund, to which all monies received by the joint committee are carried and from which all expenses lawfully incurred by the joint committee in the execution of their duties are defrayed. For the purpose of defraying the expenses incurred by the joint committee, each of the constituent councils contributes to the joint fund on the basis prescribed in the order, whether on rateable value or otherwise. Contribution orders are to be made by the joint committee half-yearly on the various constituent councils.

In some areas a fixed percentage of the total expenditure is paid by each constituent council in an agreed proportion. For instance in one area the percentage proportion was agreed for each of the first three years, and in respect of later years the percentage was to be agreed between the councils, or, in default of agreement, determined by the Minister. In another area, the proportions are specified in the order and may be reviewed by the councils during the first six months of the fifth year of its operation and during the first six months of each subsequent fifth year, and if on any such review all the councils agree that the proportion thereby prescribed shall be altered the proportion agreed by the councils is substituted. In other areas, the proportion is based definitely on the rateable value of the area on the 1st day of April, or the 1st day of October, immediately preceding the date of the contribution order. [764]

Settlement of Disputes.—It is usual for provision to be made in a constitution order that in the event of dispute arising between any of the constituent councils and the joint committee or between any two or more such councils, the dispute may, on the application of any

(*aa*) See Audits Regulations, 1934, S. R. & O., 1934, No. 1188.

one or more of the parties affected, be referred to the Minister, who may, if he thinks fit, decide the dispute. If the Minister decides the dispute, his decision is binding and conclusive on all parties concerned. [765]

Adjustment of Financial Relations.—Provision is also made in each order for the method of financial adjustment in the event of its revocation or the closing of any casual wards, or of any part of the cost of provision, alteration or equipment which has been paid out of the joint fund. [766]

London.—The arrangements in London for dealing with casuals are described on p. 448 of Vol. II. No joint vagrancy committee has been constituted of which London forms a constituent area. [767]

LIST OF JOINT VAGRANCY COMMITTEES

Joint Committee.	Constituent Councils.	
	County Councils.	County Borough Councils.
ENGLAND.		
BERKS, BUCKS AND OXON JOINT VAGRANCY COMMITTEE.	Berks; Bucks; Oxford.	Oxford; Reading.
CHESHIRE JOINT (CASUAL) RELIEF COMMITTEE.	Cheshire.	Birkenhead; Chester; Stockport; Wallasey.
DEVONSHIRE JOINT VAGRANCY COMMITTEE.	Devon.	Exeter; Plymouth.
COUNTY OF DURHAM JOINT VAGRANCY COMMITTEE.	Durham.	Darlington; Gateshead; South Shields; Sunderland; West Hartlepool.
EAST ANGLIAN JOINT VAGRANCY COMMITTEE.	Cambridge; East Suffolk; Hunts; Isle of Ely; Norfolk; West Suffolk.	Great Yarmouth; Ipswich; Norwich.
LEICESTER, LEICESTERSHIRE AND RUTLAND JOINT VAGRANCY COMMITTEE.	Leicester; Rutland.	Leicester.
LINCOLNSHIRE JOINT VAGRANCY COMMITTEE.	Holland; Kesteven; Lindsey; Soke of Peterborough.	Grimsby; Lincoln.
MIDDLESEX AND NORTHERN HOME COUNTIES JOINT VAGRANCY COMMITTEE.	Essex; Herts; Middlesex.	East Ham; Southend-on-Sea; West Ham.
NORTHAMPTONSHIRE JOINT VAGRANCY COMMITTEE.	Bedford; Northampton.	Northampton.
NORTHUMBRIA JOINT VAGRANCY COMMITTEE.	Northumberland.	Newcastle-upon-Tyne; Tynemouth.
NORTH-WESTERN CASUAL POOR ASSISTANCE AUTHORITY.	Cumberland; Lancaster; Westmorland.	Barrow-in-Furness; Blackburn; Blackpool; Bolton; Bootle; Burnley; Bury; Carlisle; Liverpool; Manchester; Oldham; Preston; Rochdale; St. Helens; Salford; Southport; Warrington; Wigan.
NOTTINGHAMSHIRE AND DERRYSHIRE JOINT VAGRANCY COMMITTEE.	Derby; Nottingham.	Derby; Nottingham.
SOUTH-EASTERN COUNTIES JOINT VAGRANCY COMMITTEE.	East Sussex; Kent; Southampton; Surrey; West Sussex.	Bournemouth; Brighton; Canterbury; Croydon; Eastbourne; Hastings; Portsmouth; Southampton.

LIST OF JOINT VAGRANCY COMMITTEES—*continued*

Joint Committee.	Constituent Councils.	
	County Councils.	County Borough Councils.
SOUTH MIDLAND JOINT VAGRANCY COMMITTEE.	Warwick ; Worcester.	Birmingham ; Coventry ; Smethwick ; Worcester.
SOUTH-WESTERN JOINT VAGRANCY COMMITTEE.	Dorset ; Gloucester ; Somerset ; Wilts.	Bath ; Bristol ; Gloucester.
STAFFORDSHIRE JOINT VAGRANCY COMMITTEE.	Stafford.	Burton - upon - Trent ; Dudley ; Stoke-on-Trent ; Walsall ; West Bromwich ; Wolverhampton.
YORKSHIRE CASUAL POOR ASSISTANCE AUTHORITY.	East Riding ; North Riding ; West Riding.	Barnsley ; Bradford ; Dewsbury ; Doncaster ; Halifax ; Huddersfield ; Kingston-upon-Hull ; Leeds ; Middlesbrough ; Rotherham ; Sheffield ; Wakefield ; York.
WALES.		
NORTH WALES JOINT VAGRANCY COMMITTEE.	Anglesey ; Caernarvon ; Denbigh ; Flint ; Merioneth ; Montgomery.	—
SOUTH WALES JOINT VAGRANCY COMMITTEE.	Brecon ; Monmouth ; Glamorgan.	Cardiff ; Merthyr Tydfil ; Newport ; Swansea.
WEST WALES JOINT VAGRANCY COMMITTEE.	Cardigan ; Carmarthen ; Pembroke ; Radnor.	—

[768]

JOINT WATER BOARDS

See WATER AUTHORITIES.

JUDGES' LODGINGS

Primarily the responsibility of providing lodgings for His Majesty's Judges of Assize rests on the sheriff of the county for which the commission issues, but the primary responsibility may rest elsewhere if it can be shewn that the duty of providing lodgings is imposed upon the county, as, for example, by a local Act. It would appear, however, that in the absence of any statutory exoneration of the sheriff from his responsibility, he would be answerable for any failure to provide lodgings, and he should, through his under-sheriff, ascertain that lodgings are in fact ready and in a proper state for occupation prior to each

assize. Certain allowances, fixed by the Treasury, are made in respect of the provision of judges' lodgings on the examination of the sheriff's bill of cravings; the sheriff may arrange to hand over these allowances to a county council, or other local authority, who provide the lodgings, but the Treasury is not prepared to enter into any arrangement as to payment for the provision of judges' lodgings, except with the sheriff.

The statutory provisions enabling county councils to provide judges' lodgings may now be mentioned.

By sect. 3 of the County Buildings Act, 1826 (*a*), justices in quarter sessions were empowered to consider any presentment of the grand jury or by justices that lodgings for the accommodation of H.M. judges are insufficient, inconvenient or in want of repair or improvement, or that new judges' lodgings are required. If quarter sessions found the presentment to be well founded, they were enabled and required to alter, enlarge or repair judges' lodgings, or to build new lodgings in lieu of any buildings pulled down. By sect. 13 (*b*) where judges' lodgings had "for time out of mind" been maintained or provided at the expense of any particular person or persons or of any riding, division or part of any county or city or town corporate, the liability was to continue (*c*). [769]

Sect. 1 of the County Buildings Act, 1837 (*d*), applied the provisions of the Act of 1826 to buildings used for assize purposes, but also used partly as a shire hall or county hall and partly as a town hall, and not belonging exclusively to the county justices. By sect. 2 justices in quarter sessions were empowered to provide the necessary accommodation for assizes on a change of the assize town.

Sect. 1 of the Judges' Lodgings Act, 1839 (*e*), empowered the justices in quarter sessions to purchase any house or buildings or to purchase land and build thereon, in order that the buildings might be used wholly or partly as judges' lodgings. The machinery of the Act of 1826 was applied to proceedings under the Act of 1839, and the object of the statute seems to have been to provide for judges' lodgings on a new site entirely separate from that of the old lodgings (if any) and to enable justices to provide lodgings *de novo*, and not in lieu of a building pulled down. [770]

The County Buildings Act, 1847 (*f*), applied the Acts of 1826 and 1837 to cases where assizes had formerly been held in the town hall of a city or town (not the property of the county), and enabled the justices to act although the town hall formerly used had not been pulled down.

The administrative functions of justices in relation to judges'

(a) 10 Statutes 530. The provisions of the Act of 1826 as to purchases and sales of land and financial matters appear to be superseded by the L.G.A., 1933, and by the R. & V.A., 1925.

(b) 10 Statutes 539.

(c) This includes counties of cities having a separate commission of assize and bound by law or ancient usage to maintain, repair or provide judges' lodgings. By s. 8 when assizes are held for a county at large in or near a county of a city at the same time as the assizes for the city, the judges' lodgings are held to be in both the county and the county of the city. Apparently, unless the city was bound to provide lodgings prior to the Act of 1826, there is no power to compel the city to contribute towards the expense of providing judges' lodgings; or *vice versa*, unless the county was liable prior to 1826 or has since assumed liability under the Act of 1826.

(d) 10 Statutes 541.

(e) *Ibid.*, 543.

(f) *Ibid.*, 544.

lodgings were transferred to county councils by sect. 3 (iv.) of the L.G.A., 1888 (g); and by sect. 64 of the Act (h) any property then held by or in trust for the county justices for that purpose was vested in the county council (i).

Sect. 307 of and Part IV. of the Eleventh Schedule to the L.G.A., 1933 (k), repeal the County Buildings Acts of 1826, 1837 and 1847, except so far as they relate to assize courts, sessions houses and judges' lodgings. The Acts of 1837 and 1847 do not refer in terms to judges' lodgings, but it would appear that the provision of judges' lodgings must be regarded as ancillary to the provision of assize courts, and the form of the repeal by the Act of 1933 of these statutes affords confirmation of this view. [771]

The acquisition of land by agreement for judges' lodgings is governed by sects. 157, 158 of the L.G.A., 1933 (l), which include powers of purchase by agreement, taking on lease, or of acquiring in advance of requirements. A compulsory purchase of land for judges' lodgings can be effected under sects. 159, 160 of the Act by means of a provisional order of the M. of H. confirmed by Parliament. Both the appropriation to judges' lodgings of land already owned by the county council, and the appropriation of judges' lodgings owned by the county council to other purposes can be effected under sect. 163 of the Act (m) with the approval of the Minister.

In considering the liability of a county council to provide judges' lodgings it must be ascertained whether (1) the justices whose administrative functions were transferred to that county council had "for time out of mind" prior to the passing of the County Buildings Act, 1826, maintained or provided lodgings, or (2) by taking action under any of the statutes already quoted the justices (or, since the L.G.A., 1888, the county council) have assumed responsibility. Failing the fulfilment of one of these conditions it would appear that a county council is empowered, but is not compelled, to provide judges' lodgings. [772]

Judges' lodgings used exclusively for that purpose are exempt from rating as property in the occupation of persons by whom it is used on the service of the Crown, and, *semble*, occasional user for non-exempt purposes by persons other than the occupiers, such user not amounting to beneficial occupation by, or yielding any profit to the persons proposed to be rated, would not destroy the exemption (n); but where buildings, including the judges' lodgings, were let by the providing authority to the corporation of a city for the purpose of holding city quarter sessions and a city court of record, the providing authority were held to be rateable in respect of a beneficial occupation in so far as the rent paid by the corporation represented a profit to the providing authority (o). These cases were decided prior to the vesting in county councils of the property of quarter sessions, and where premises are

(g) 10 Statutes 689.

(h) *Ibid.*, 738.

(i) See s. 64 (4) and (5) as to vesting of property in the counties of Sussex, Suffolk, Lincoln and York.

(k) 26 Statutes 460, 519.

(l) *Ibid.*, 301, 302.

(m) *Ibid.*, 306.

(n) *R. v. Castle View, Leicester* (1867), L. R. 2 Q. B. 407; 38 Digest 485, 427.

(o) *Lancashire J.J. v. Cheetham Overseers* (1867), L. R. 3 Q. B. 14; 38 Digest 437, 93.

jointly occupied by quarter sessions of a county for the administration of justice, and by a county council for administrative business, the county council are rateable in respect of their occupation of the premises (p); and the same principle applies when the county buildings afford accommodation for assizes, including judges' lodgings (q). [778]

(p) *Middlesex County Council v. St. George's Union Assessment Committee*, [1897] 1 Q. B. 64; 88 Digest 492, 481.

(q) *Worcestershire County Council v. Worcester Union*, [1897] 1 Q. B. 480; 38 Digest 408, 298.

JURORS AND JURY LISTS

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See also titles : CORONERS ;
COMPULSORY PURCHASE OF LAND ;
MENTAL DISORDER AND MENTAL DEFICIENCY ;
REGISTRATION OF ELECTORS.

General.—Juries are bodies of men and women convened by process of law to discharge upon oath (a) certain defined public duties. The system is one of the foundations of English justice, said by some to have been introduced by the Normans, and by others to have existed before their advent. Up to mediæval times, however, juries were a body of neighbours convened to answer, from their knowledge of the persons or the locality, questions put to them. Since then juries of two kinds have been established, one of presentment, such as grand juries, and the other to decide the facts of a case after hearing the evidence. For the law generally, and particularly as to the relative duties of judge and jury, see *Halsbury's Laws of England* (Hailsham Edn.), Vol. XIX., pp. 279 *et seq.* Juries called to determine whether or not a person is of unsound mind (b) are dealt with in the title MENTAL DISORDER AND MENTAL DEFICIENCY; juries called to assess compensation in regard to the acquisition of land (c), in the title COMPULSORY PURCHASE OF LAND, while juries called in inquisitions

(a) By s. 3 of the Interpretation Act, 1889; 18 Statutes 993, this includes ability to affirm or declare.

(b) See ss. 91—97 of the Lunacy Act, 1890; 11 Statutes 52—54.

(c) See ss. 23, 38—57 of the Lands Clauses Consolidation Act, 1845; 2 Statutes 1121, 1126—1182.

into treasure trove (*d*), as in other coroners' inquisitions are dealt with later. [774]

Grand Juries.—Presentment of a true bill by a grand jury before trial was declared to be a condition precedent to trial by a Statute of Edward III. in 1351-2 (*e*). The jury consisted of from twelve to twenty-three persons, usually county magistrates and freeholders next in order of precedence to peers. Grand juries were suspended during the War by the Grand Juries Suspension Act, 1917, and revived in 1921. By the Administration of Justice (Miscellaneous Provisions) Act, 1933 (*f*), they were finally abolished, and a new procedure for the indictment of offenders was established. [775]

Common Juries.—In all criminal cases where a person is charged by indictment or by the laying of an information, a jury must be sworn to try the issue. It must consist of twelve persons who must be unanimous, but by sect. 15 of the Criminal Justice Act, 1925 (*g*), where a member of the jury dies or is discharged through illness or for any other reason during a criminal case, the trial may go on with a jury of ten or eleven, subject to a consent given by or on behalf of both the prosecutor and the accused. By sect. 78 of the Supreme Court of Judicature Act, 1925 (*h*), if the clerk of assize finds, not more than five days before the commission day, that the attendance of jurors will not be required because there is no business to be done for which they are needed, he must give them written notice to that effect. The right to a jury in civil cases depends in the High Court (*i*) on the nature of the case, except in the Chancery Division, when it is tried without a jury unless the court or judge specially orders. The procedure was last determined by sect. 6 of the Administration of Justice (Miscellaneous Provisions) Act, 1933 (*j*), and the rules made under it (*k*). By this section, except in certain cases, any action to be tried in the King's Bench Division may be ordered by the court or a judge to be tried either with or without a jury. The exceptions are cases of fraud, libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage. In such cases either party may make an application and the court or judge must order the case to be tried with a jury unless of opinion that the trial requires a prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury. [776]

Qualifications of the jury and penalties for their non-attendance are dealt with later (*l*). As to remuneration, there is no remuneration in criminal cases and jurors must pay their own expenses. In civil cases in the High Court a payment of 1s. is customary and at assizes of 8d. The conduct of a jury is of particular importance especially while they are considering their verdict, and misconduct (*m*) may result in their discharge or the ordering of a new trial. By sect. 23 of the Juries Act, 1870 (*n*), jurors, after being sworn, may, in the discretion

(*d*) See 9 Halsbury (2nd ed.) 179.

(*e*) 2 Statutes 65.

(*f*) Ss. 1, 2; 26 Statutes 80, 81, and Rules (S.R. & O., 1933), No. 745, p. 556.

(*g*) 11 Statutes 407.

(*h*) 4 Statutes 168.

(*i*) For County Courts, see *post*, pp. 396, 397.

(*j*) 26 Statutes 642.

(*k*) See various S.R. & Os. contained in Order 36 of the Rules of the Supreme Court, as amended by S.R. & O., 1933, No. 735, p. 1820.

(*l*) *Post*, pp. 395, 402.

(*m*) See 30 Digest 234—240 for cases of such misconduct.

(*n*) 10 Statutes 76.

of the judge, be allowed before giving their verdict the use of a fire when out of court, and may be allowed reasonable refreshment to be procured at their own expense. Except upon a trial for murder, treason or treason felony (o), the court may permit the jury to separate before they consider their verdict (p). After retiring to consider their verdict, the jury are never permitted to separate, and it is then customary to provide them with lodging and refreshment at the expense of the county.

The old common law right of a woman sentenced to death, who alleged that she was pregnant, to have a jury of matrons was taken away by the Sentence of Death (Expectant Mothers) Act, 1931 (q). By that Act any woman convicted of an offence punishable with death, may allege before being sentenced that she is pregnant and the matter is decided by the jury that tries the case. If the decision is not in her favour, she may appeal to the Court of Criminal Appeal and the judges there, if of opinion that she is pregnant, must sentence her to life imprisonment instead of to death. [777]

Special Juries.—By sect. 30 of the Juries Act, 1825 (r), a special jury may be authorised on application to the High Court on behalf of the King, or of any prosecutor, relator, plaintiff or defendant, in any case, whether civil or criminal except for treason or felony (s). By that section the special jury was to be "struck" before the proper officer of each respective court, but by sect. 16 of the Juries Act, 1870 (t), special juries for London and Middlesex, and by sect. 5 of the Juries Act, 1922 (u), special juries for the whole country were ordered to be chosen by ballot. By the latter section, however, the old method of striking is still to be continued in the case of a special jury to try a question of disputed compensation under the Lands Clauses Consolidation Act, 1845 (a). By sect. 34 of the Act of 1825 (b), the person or party who applies for a special jury must pay all the expenses occasioned by the trial by them, unless the judge before whom the case is tried certifies, immediately after the verdict, that it was a proper case to be tried by a special jury. By sect. 35 of the same Act, the fee to a special jurymen is not to exceed £1 1s. 0d., except in cases where a view is directed, and the sum is to be decided by the judge who tries the case. The sum for a view has since been fixed at a guinea (c). The qualification and summoning of a special jury are dealt with later (d). [778]

Juries in County Courts.—The law in regard to juries in county courts is now set out in sects. 91 to 94 of the County Courts Act, 1934 (e), while by sect. 139 of the same Act (f) anyone wilfully insulting a

(o) See Treason Felony Act, 1848, s. 3; 4 Statutes 480.

(p) Juries Detention Act, 1897, s. 1; 10 Statutes 78.

(q) 24 Statutes 115.

(r) 10 Statutes 57, and see R.S.C. Order 36, Rule 9 as to civil actions.

(s) As to felony, see *R. v. Mayne* (1883), 32 W. R. 95; 30 Digest 264, 670, and as to treason, see *R. v. Wright* (1904), *Times*, January 27; 30 Digest 264, 671.

(t) 10 Statutes 74.

(u) *Ibid.*, 86.

(a) See s. 54; 2 Statutes 1131.

(b) 10 Statutes 57. See cases in 30 Digest 265—266.

(c) S.R. & O., 1904, XII, Supreme Court E., p. 417.

(d) *Post*, pp. 390—401.

(e) 27 Statutes 133—135. It should be noted that at the date of publication of this Volume of LOCAL GOVERNMENT LAW AND ADMINISTRATION, the County Courts Act, 1934, has not been brought into force and will not be brought into force until the whole of the County Courts (Amendment) Act, 1934, is in force. It was considered advisable, however, to deal with Juries in County Courts as if the consolidation of the law had already taken effect.

(f) *Ibid.*, 154.

juror in a county court may be committed for a period up to seven days or fined up to £5. By sect. 91 a trial is to be without a jury in Admiralty proceedings, in proceedings under the Rent and Mortgage Interest Restrictions Acts, 1920 to 1933, and in appeals under sect. 22 of the Housing Act, 1930. In all other cases the trial is to be without a jury unless the court decides otherwise on an application made by any party to the proceedings in accordance with rules to be prescribed (*g*). In cases where a charge of fraud is alleged against the party making the application, or the claim is in respect of libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage, the court must order a trial by jury, unless it is of opinion that the trial requires any prolonged examination of documents or accounts or any scientific or local examination which could not conveniently be made by a jury. By sect. 94 of the County Courts Act, 1934, where a case is being tried by a judge and jury and it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law is to be decided by the judge alone. The summoning of jurors in county courts is dealt with in sect. 92, which requires the registrar on the first occasion in any year on which an order is made in a county court for a trial by jury, to obtain copies of the last published registers of electors for all the registration units comprised in whole or in part within the district of the court. The registrar is then to summon to attend the prescribed number of jurors or special jurors from persons marked as jurors or special jurors on the register (*h*); but no person is to be summoned to attend on a jury in the same county court more than twice in the same year. The summons may be served either by post or in a manner prescribed. If a juror fails to attend at the time and place mentioned in the summons, he is to forfeit a sum not exceeding £5 as the court may direct, but he may be excused if he satisfies the court either that he has within the six months preceding attended on a jury in some other court, or that there is any other good reason why he should be excused (*i*).

Eight jurymen are to be impanelled (*k*), where proceedings are to be tried by jury, and sworn as occasion requires to give their verdict in the proceedings brought before them. Once sworn they need not be re-sworn in each trial. Any party is entitled to challenge (*l*) all or any of the jurors as he would in the High Court. The jury must give a unanimous verdict. The amount to be paid to the registrar for the payment of a jury is 8s. [770]

Coroners' Juries.—By sect. 3 of the Coroners Act, 1887 (*m*), where a coroner is informed that the dead body of a person is lying within his jurisdiction and he has reason to suspect that the person has died a violent or unnatural death, or has died a sudden death of which the cause is unknown, or has died in prison, or under such circumstances as to require an inquest in pursuance of any Act (*n*), the coroner,

(*g*) County Court Rules as amended by County Court Rules, 1934, No. 1319 and 1401, and as to women on County Court Juries, S.R. & O., 1920, No. 2324.

(*h*) See para. Jury Lists, *post*, p. 399.

(*i*) Act of 1934, s. 92 (4); 27 Statutes 135.

(*k*) *Ibid.*, s. 93.

(*l*) See *post*, p. 398.

(*m*) 3 Statutes 760, amended as to number by s. 30 of and Sched. II. to Coroners (Amendment) Act, 1926; 3 Statutes 795, 796. As to recommendations for the future, see the Report of the Departmental Committee on Coroners, published January, 1936: Cmd. 5070, price 1/8d.

(*n*) See title CORONERS.

whether the cause of the death arose in his jurisdiction or not, must as soon as practicable issue a warrant for summoning not less than seven nor more than eleven good and lawful men to inquire as jurors into the death of the person. From mediæval times such a jury has been summoned by the coroner's officer from the neighbourhood, and the rules as to registration and summoning are not the same as for ordinary juries as they have to be summoned in haste, but the exemptions (o) do apply, and women are equally liable to service with men. The subject of the coroner's jury was discussed fully in 1930 in the case of *R. v. Divine* (p), and among other things it was held that the practice of calling a small panel of regular jurymen, whether or not illegal, was improper. The county council and the council of each borough who can appoint a coroner (q) are by sect. 25 of the Act of 1887 (r) from time to time to make a schedule of fees and allowances to coroners. Where an inquest is held on the body of a prisoner who dies in prison, no officer of the prison or prisoner therein nor any person engaged in any sort of trade or dealing with the prison must be a juror at the inquest (s). By sect. 5 of the Capital Punishment Amendment Act, 1868 (a), an inquest must be held within twenty-four hours after an execution. While a coroner must view the body at or before an inquest, by sect. 14 of the Act of 1926 (b) the jury need not do so, unless the coroner directs or a majority of the jurors request that they shall view. If the jury disagree, a majority vote may be accepted by the coroner (c). There is no right of challenge to a coroner's jury (d). [780]

In certain cases, however, a coroner may hold an inquest without a jury (e), but there *must* be a jury, if he has reason to suspect that the death was due to murder, manslaughter or infanticide, or if it occurred in prison, or was caused by an accident, poisoning or disease, of which notice must be given to a Government department (f), or was caused by a road accident or occurred in circumstances the continuance or possible recurrence of which might be prejudicial to the safety of the public. By sect. 19 of the Act of 1887 (g), a fine not exceeding £5 may be imposed by the coroner on a jurymen who does not appear, or appearing refuses without reasonable excuse to serve.

Sect. 36 of the Act of 1887 (h) continues the jurisdiction of the coroner with a jury over treasure trove, which is said to have been common law long before it was declared in statutory form in 1276. [781]

Challenge of Jurors.—A right to challenge a jury has always existed in order that the accused may feel that the trial has been without bias

(o) See *post*, p. 401, and *Re Dutton*, [1892] 1 Q. B. 486; 13 Digest 243, 146, and *R. v. Waldo* (1903), 67 J. P. 103; 18 Digest 243, 144.

(p) [1930] 2 K. B. 20; Digest (Supp.).

(q) *Viz.* county boroughs and quarter sessions boroughs with a population of 10,000 or upwards at the census of 1881; see L.G.A., 1888, ss. 34 (3), 38; 10 Statutes 712, 716.

(r) 3 Statutes 771, amended by s. 30 of the Act of 1926; 3 Statutes 795.

(s) Act of 1887, s. 3 (2); 3 Statutes 761.

(a) 4 Statutes 642.

(b) 3 Statutes 787.

(c) Act of 1926, s. 15; 3 Statutes 787.

(d) *R. v. Ingham* (1804), 5 B. & S. 257, at p. 276; 13 Digest 240, 237.

(e) Act of 1926, s. 13; 3 Statutes 785.

(f) For list of these Acts, see 3 Statutes 786 and title CORONERS.

(g) 3 Statutes 768. As to penalties in the case of ordinary jurors, see *post*, p. 402.

(h) 3 Statutes 774.

against him. By sect. 2 of the Treason Act of 1695 (*i*), a person accused of treason was allowed to challenge peremptorily, *i.e.* without showing cause, up to thirty-five jurors; and, in murder or felony, but not of misdemeanor, sect. 29 of the Juries Act, 1825 (*k*), gives a right of peremptory challenge up to twenty jurors. Both the accused and the Crown in a criminal trial have the right to challenge for cause the array, or whole panel, because of matters personal to the sheriff, and in civil cases there is a challenge for both plaintiff and defendant on showing cause. [782]

Jury Lists. *Preparation of Book and Summoning of Jurors.*—The method of preparation of the jurors books is now set out in sect. 1 of the Juries Act, 1922 (*l*). It is the duty of every registration officer when making out the electors lists for any year (*m*) to mark the names of the persons qualified and liable to serve as jurors and as special jurors. The registration officer and electors lists will be dealt with in the title REGISTRATION OF ELECTORS. "Overseers" have been abolished by the R. & V.A., 1925, and their work with regard to jurors transferred to the rating authority (*n*). By sect. 79 of the L.G.A., 1929 (*o*), for the purposes of determining the qualification of a juror or special juror, the rateable value of property is to be taken as the net annual value appearing in the valuation list.

Under sect. 1 (*4*) of the Juries Act, 1922 (*p*), anyone marked on the list as a juror or special juror may apply to have the mark removed on the grounds of some disqualification or exemption (*q*), and if the registration officer does not agree, may under sect. 1 (*5*) appeal to a court of summary jurisdiction. If the claim has been allowed, the registration officer, before marking him on a subsequent list, must give him notice not less than fourteen days before the publication of the list (sect. 1 (*6*)). The clerk of every county council as soon as possible after the latest date for the publication of the autumn register must obtain copies of the registers for all the units comprised in the county, and must have those names marked made up into a book, to be called the jurors book for the county, which he must deliver to the sheriff (sect. 1 (*7*), (*8*)). Any expenses incurred by a registration officer are to be considered as expenses under the Representation of the People Acts. The word sheriff, by sect. 7 of the Act of 1922 (*r*), includes any person charged with the return of jurors, and under sect. 186 (*3*) of the Municipal Corporations Act, 1882, this in a quarter sessions borough is the clerk of the peace for the borough, and in a borough civil court the registrar. By sect. 81 of the L.G.A., 1888 (*s*), where a county borough is not an assize town, it is to be considered for the purpose of the service of jurors and the making of jury lists to be in the county in which it lies, according to a list given in the Third Schedule to the Act. By sect. 4 of the Juries

(*i*) 4 Statutes 329.

(*k*) 10 Statutes 56. See cases in 30 Digest 220—230.

(*l*) 10 Statutes 81.

(*m*) One register only is now made under s. 9 (*1*) of the Representation of the People (Economy Provisions) Act, 1926; 7 Statutes 640.

(*n*) Overseers Order, 1927, Art. 3; 14 Statutes 771. As to the particulars to be furnished, see the Juries Order, S.R. & O., 1927, No. 265, p. 616.

(*o*) 10 Statutes 934.

(*p*) *Ibid.*, 82.

(*q*) See *post*, p. 401.

(*r*) 10 Statutes 87.

(*s*) *Ibid.*, 708. Not repealed by the L.G.A., 1933, though a later list of county boroughs is given in Part II of the First Schedule to that Act.

Act, 1922 (*t*), where a borough has a separate court of quarter sessions or a borough civil court, the persons on the list in the area of the borough are qualified and liable to serve on juries at the quarter sessions or at the borough civil court, and the clerk of the county council in which the area lies must, on demand, supply the person charged with the return of jurors with a copy of so much of the jury book as relates to the borough, free of charge. Personal service, or leaving the summons at the juryman's abode, is prescribed as the method of summoning the jurors to such courts by sect. 186 of the Municipal Corporations Act, 1882 (*u*), but notwithstanding this provision, any juryman may be summoned by registered letter under sect. 11 of the Juries Act, 1862 (*a*). [783]

Every person whose name is included in a jurors book is liable to serve (*b*) notwithstanding that he may have been entitled by some disqualification or exemption to claim that he should not be marked as a juror in the electors list, though this does not affect his right to be excused on the grounds of illness, or, if a woman, on medical grounds. Juries are summoned by the sheriff, in practice the under-sheriff, and in borough quarter sessions or civil courts, by the clerk of the peace or registrar for the borough. The sheriff or other officer, under sect. 3 of the Juries Act, 1922 (*c*), may excuse a juror from attendance on the production in writing of a reasonable excuse, but he must produce to the court or judge the application received and his reasons for complying with it. [784]

Qualifications.—The qualifications for common jurors are contained in sect. 1 of the Juries Act, 1825 (*d*), and include every man and woman (*e*) between the ages of twenty-one and sixty years residing in the county, who owns property worth £10 a year freehold, or £20 a year leasehold, or who is a householder assessed to the general rate at £30 in Middlesex or £20 elsewhere. These qualifications were applied to borough courts by sect. 4 of the Juries Act, 1922 (*f*). The qualifications of special jurors are set out in sect. 6 of the Juries Act, 1870 (*g*), and consist in being legally entitled to be called an esquire or in being a person of higher degree, or a banker or merchant, or in occupying a private dwelling-house assessed to the general rate at not less than £100 in a town containing 20,000 inhabitants and upwards at the last census, or £50 elsewhere, or in occupying other premises other than a farm assessed at not less than £100 or a farm at not less than £300. Aliens are not qualified to serve on a jury as their names should not appear in the register of electors on which the names are marked (*h*). But if their names do happen to be on the list, they must serve (*i*) and by sect. 8 of the Aliens Restriction (Amendment) Act, 1919 (*k*), no alien may sit upon a jury in any judicial or other proceeding if challenged by any party. By sect. 8 of the Juries Act, 1870 (*l*), an alien might

(*f*) 10 Statutes 85.

(*u*) *Ibid.*, 635. Sub-s. (1) was repealed by the Act of 1922, and sub-s. (2) in part by the Administration of Justice (Miscellaneous Provisions) Act, 1933.

(*c*) 10 Statutes 70.

(*b*) Juries Act, 1922, s. 2; 10 Statutes 84.

(*a*) 10 Statutes 85.

(*d*) *Ibid.*, 50.

(*e*) See *post*, p. 401.

(*f*) 10 Statutes 85.

(*g*) *Ibid.*, 79. For cases on these definitions, see 30 Digest 262, 653—655.

(*h*) See s. 1 (2) of the Act of 1922; 10 Statutes 82.

(*i*) S. 2 of the Act of 1922; *ibid.*, 84.

(*k*) 1 Statutes 206.

(*l*) 10 Statutes 73.

serve if he had been domiciled in England or Wales for ten years, but by the Act of 1922 (*m*) the section was restricted to inquests only. By sect. 10 of the Act of 1870 (*n*) no one who has been convicted of treason, felony, or any infamous crime, unless he has obtained a free pardon, is qualified to serve. [785]

Exemptions.—The only persons absolutely exempt from serving are (1) persons under twenty-one, as they are not included in the list of electors, (2) persons over sixty (*o*), and (3) the women who are vowed members of a religious order living in a convent or other religious community (*p*). Others as already pointed out, must serve if their names are on the list, unless they are excused. By sect. 9 of the Act of 1870 (*q*) certain classes of persons are exempt and their names should not be marked on the list, but exemption should be claimed when the electors lists are being prepared. A list of these persons is given in the schedule to the Act (*r*), and includes members of both Houses of Parliament, clergymen, priests and ministers, judges, practising barristers, solicitors and doctors, coroners, gaolers and warders, chemists, police officers, magistrates and councillors of boroughs, town clerks and treasurers, pilots and certain civil servants. To these have been added by other Acts, the Royal Forces, registered dentists "if they so desire," and members of the L.C.C. and Port of London Authority. [786]

Women on Juries.—Women could not serve on juries till 1919, when by sect. 1 of the Sex Disqualification (Removal) Act, 1919 (*s*), it was enacted that a person should not be exempted by sex or marriage from the liability to serve as a juror. The qualifications are the same as for a man, but as fewer women than men are owners or occupiers of property, their names are not marked so numerous as those of men. It is provided, however, that any judge, chairman of quarter sessions or recorder may, on application from either party or at his own discretion, make an order that the jury should be composed of men only or of women only, or he may on application exempt a woman from service by reason of the nature of the evidence to be given. Rules of court may by the same section (*t*) be made to prescribe the manner in which women jurors are to be summoned and selected from the panel, to exempt from attendance women unfit to attend for medical reasons, and as to the procedure to be adopted on any application under the section. [787]

Relief from Service.—No person may be summoned to serve on any jury more than once in any one year unless all the jurors upon the list have already been summoned during the year (*u*) and no person may be summoned or liable to serve in more than one court on the same day (*a*). But no person may be exempted from serving as a common juror

(*m*) By s. 8 (4) and Schedule; 10 Statutes 88.

(*n*) 10 Statutes 73.

(*o*) See Act of 1825, s. 1; 10 Statutes 50.

(*p*) See Act of 1922, s. 8 (2) (b); 10 Statutes 88.

(*q*) 10 Statutes 73.

(*r*) *Ibid.*, 76.

(*s*) *Ibid.*, 79.

(*t*) Those made are the Rules of the Supreme Court (Women Jurors), S.R. & O., 1920, No. 1978; the Women Jurors (Criminal Cases) Rules, S.R. & O., 1920, No. 2015; and the County Court (Women Jurors) Rules, S.R. & O., 1920, No. 2324.

(*u*) Juries Act, 1870, s. 19 (1); 10 Statutes 75, and s. 186 (6) of Municipal Corporations Act, 1882; 10 Statutes 635.

(*a*) Act of 1870, s. 19 (3); 10 Statutes 75.

because he is on the special jurors list (*b*). By sect. 33 of the Act of 1825 (*c*) the court, if it thinks fit, upon the application of a juror who has served on one or more special juries at any assizes or sessions may discharge him from serving upon any other special jury during the same assizes or sessions. By sects. 40 to 42 of the same Act (*d*), the sheriffs are to keep lists of the jurors serving and they are not to be returned again within certain periods varying in different parts of the country. A juror under the Lands Clauses Consolidation Act, 1845 (*e*), is also only liable to serve once a year unless he consents to do so. It has become a custom for judges and recorders to excuse jurors for a term or even for life where they have served in a case that has occupied a long period. [788]

Offences and Penalties.—By sect. 61 of the Act of 1825 (*f*), every person guilty of embracery, that is, of attempting to influence a juror by bribes or corrupt means, and every juror who consents to such an offence may be fined or imprisoned. By sect. 38 of the same Act (*g*), if any juror who has been summoned does not attend, or is present but does not appear, or after appearance wilfully withdraws without reasonable excuse, the court may fine him as it thinks fit, and if any viewer makes such a default, the fine must be at least £10. By sect. 54 (*h*), the fine in inferior courts is fixed at not more than 40s. nor less than £1, while the fine at borough sessions or a borough civil court is fixed by sect. 186 (*i*) of the Municipal Corporations Act, 1882 (*j*), at the sum the court thinks fit. By sect. 12 of the Juries Act, 1862 (*k*), the fines are not to be estreated for fourteen days and in the meantime the juror must be asked, by post, to forward an affidavit of the cause of his non-attendance, and when this is submitted to the court it has power to remit the fine. By sect. 20 of the Act of 1870 (*l*), no juror is to be liable to any penalty for non-attendance unless the summons was served at least six days before the day on which he was required to attend. [789]

London.—In the City of London, under sect. 50 of the Juries Act, 1825 (*m*), the persons qualified as jurymen are householders, or occupiers of business premises, with real or personal estate of £100.

In the City of London the list is prepared by the Secondary of the City under sect. 26 of the City of London (Union of Parishes) Act, 1907 (*n*). This officer also keeps the jury book. The Juries Act, 1922, does not apply as regards the method of preparation of the jury list and the jury book in the City of London; see sect. 8 of the Juries Act, 1922 (*o*), and also Halsbury's Laws of England (Hailsham Edn.), Vol. XIX., paras. 597–8.

For the purposes of the Juries Act, 1922, "the clerk of the county council" means in London the clerk of the peace (*p*). [790]

(*b*) Act of 1870, s. 19 (2).

(*d*) *Ibid.*, 59, 60.

(*e*) Lands Clauses Consolidation Act, 1845, s. 57; 2 Statutes 1182.

(*f*) 10 Statutes 65.

(*h*) *Ibid.*, 64.

(*k*) *Ibid.*, 71.

(*m*) *Ibid.*, 62.

(*o*) 10 Statutes 88.

(*c*) 10 Statutes 37.

(*g*) *Ibid.*, 58.

(*i*) *Ibid.*, 635.

(*l*) *Ibid.*, 75.

(*n*) 14 Statutes 610.

(*p*) S. 7; 10 Statutes 87.

JUSTICES' CLERKS

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See also titles : JUSTICES OF THE PEACE ;
STIPENDIARY MAGISTRATES ;
SUMMARY PROCEEDINGS.

Appointment.—A clerk to justices is usually appointed by the justices whom he is to serve.

In counties a special sessions of the justices of the petty sessional division appoints the clerk for that division (*a*). In each division there may be appointed only one clerk, to perform the duties of clerk of petty sessions, clerk of special sessions, and clerk of a justice or justices of the peace. If, however, petty sessions are usually held at more than one place in the division, there may be a salaried clerk appointed in respect of each such place ; or, upon application by the local authority, the Secretary of State may authorise in any case the appointment of more than one salaried clerk (*a*).

In a borough the justices appoint a fit person to be their clerk (*b*), provided the borough has a separate commission of the peace. But if there be no separate commission of the peace the mayor and the person who was mayor in the preceding year, although *ex-officio* justices of the borough, have no power to appoint a clerk for borough purposes only (*c*), neither can the county justices for the petty sessional division in which the borough is situate make such an appointment unless the case can be brought within sect. 5 of the Justices Clerks Act, 1877.

A stipendiary magistrate appointed under the Stipendiary Magistrates Act, 1863, is required by sect. 6 of the Act (*d*) to appoint a clerk, who must be a solicitor in actual practice.

The appointment is in every case subject to confirmation by the Secretary of State, who must take into consideration any representations

(*a*) Justices Clerks Act, 1877, s. 5 ; 11 Statutes 321.

(*b*) Municipal Corpn. Act, 1882, s. 159 ; 10 Statutes 628.

(*c*) *Huntingdon Corpn. v. Huntingdon County Council*, [1901] 2 K. B. 257 ; 33 Digest 371, 797.

(*d*) 11 Statutes 311.

made by the standing joint committee of the county or by the borough council, as the case may be (e). This provision does not extend to a clerk to a stipendiary magistrate. [791]

Qualification.—No person may be appointed as a clerk to justices unless he is either (1) a barrister of not less than fourteen years standing; (2) a solicitor to the Supreme Court; or (3) a person who has served not less than seven years as a clerk to a police or stipendiary magistrate, or to a metropolitan police court or to one of the City of London police courts. But a person who, for not less than fourteen years, has served as, or as assistant to, a clerk to justices may be appointed as salaried clerk to the justices, in any case in which, in the opinion of the justices empowered to make the appointment, there are special circumstances rendering such appointment desirable (f).

A woman who has the necessary qualification is eligible for appointment (g). [792]

Dismissal and Removal from Office.—The clerk has no interest in his office; he holds it merely at the pleasure of the justices (h). Consequently a *mandamus* will not lie to direct justices to appoint a clerk (i). Neither will a *certiorari* issue to question the election of a clerk, for the election is merely a ministerial act on the part of justices and not a judicial act (k). [793]

Disqualifications for Appointment.—A clerk of the peace or deputy, or a partner of such clerk or deputy, may not be appointed clerk to the justices for any petty sessional division or borough in the county for which he exercises the first-mentioned office (l).

An alderman or councillor of a borough cannot be appointed clerk to the borough justices (m), but there seems to be nothing to prevent a district councillor accepting the office of clerk either to county justices or to borough justices.

The office of justice of the peace is incompatible with that of justices' clerk; and a clerk appointed to the commission of the peace would therefore be held to have vacated his position as clerk (n). [794]

Conduct whilst Holding Office.—A clerk to borough justices is prohibited under a penalty of £100 from being employed or interested, directly or indirectly, in the prosecution at sessions or assizes of any person committed for trial by his justices (o).

There is no such statutory prohibition in the case of the clerk to a petty sessional division of a county; and apparently it is the practice in some divisions for the clerk to the committing justices to act as solicitor for the prosecution at quarter sessions or assizes. This practice has received severe judicial criticism; and it has been held that the court of trial may properly disallow in such case the

(e) Criminal Justice Administration Act, 1914, s. 34; 11 Statutes 385.

(f) Justices Clerks Act, 1877, s. 7; 11 Statutes 322.

(g) Sex Disqualification (Removal) Act, 1919, s. 1; 10 Statutes 79.

(h) *R. v. Fox* (1858), 5 E. & B. 909; 33 Digest 371, 800; *Ex parte Sandys* (1883), 1 Nev. & M. (K. B.) 591; 33 Digest 371, 759.

(i) *R. v. Bodmin (Mayor)*, [1892] 2 Q. B. 21; 33 Digest 371, 801.

(k) *R. v. Drummond, Ex parte Saunders* (1903), 88 L. T. 833; 33 Digest 371, 798.

(l) Justices Clerks Act, 1877, s. 7; 11 Statutes 322.

(m) Municipal Corpn. Act, 1882, s. 159 (2); 10 Statutes 628.

(n) *R. v. Douglas*, [1898] 1 Q. B. 500; 33 Digest 288, 42.

(o) Municipal Corpn. Act, 1882, s. 159 (3), (4); 10 Statutes 628.

payment of the costs of the prosecution out of the county fund (*p*).

[795]

Where a justices' clerk is also clerk to the licensing justices, he is prohibited under a penalty of £100 from acting by himself, his partner, or clerk, as solicitor or agent (except in the preparation of forms and notices) in any proceedings under the Licensing Acts at the general annual licensing sessions, the transfer sessions, or any petty sessions held in his licensing district (*q*). This does not operate, however, to debar him from acting professionally in matters connected with the Revenue Acts, or from appearing before the compensation authority.

[796]

It is manifestly improper that a clerk to justices should act as such when his bench are dealing with a matter involving a person by whom the clerk is or has been employed professionally. At one time it was held that no legal objection could be founded upon such circumstances, inasmuch as the bench were not obliged to accept the advice of the clerk (*r*), but in recent cases the High Court have quashed the conviction or order of a bench made in such circumstances, even though the clerk may have acted in ignorance of his dual position. The principle to be observed is that not only must justice be done, but it must be apparent that justice is being done (*s*). [797]

It is inadvisable for a justices' clerk who is a member of a local authority to act with his bench during their hearing of cases brought by that authority; but it would not be objectionable that he should do the ministerial part of the court work consequent on a prosecution (*t*).

A clerk to justices who is also "collecting officer" for payments under an affiliation order may, at the request of the person on whose behalf the payments are due, initiate proceedings for the recovery of arrears before his own bench (*u*). As the collecting officer is then in effect merely an accounting officer there can be no objection to this practice on the ground of bias; but it is usual to avoid even the appearance of this by deputing an official to produce the account at the hearing. [798]

Remuneration. *To be by Salary.*—At one time the justices' clerk was paid by fees charged in respect of proceedings before his justices, or for matters done by him by virtue of his office; but by sect. 5 of the Justices Clerks Act, 1877 (*a*), it was made illegal for a clerk to retain such fees for his own use, and in substitution for them he was to be paid by salary. The salary is to cover all business which the clerk is called upon to perform by virtue of his office (*b*). Special remuneration may, however, be allowed, subject to the approval of the Secretary of State, in respect of any duties not taken into account at the time the salary was fixed (*c*); but no addition may be made to the clerk's salary in respect of any deputy employed by him.

A clerk who is appointed collecting officer for sums ordered to be

(*p*) *R. v. Ely JJ., Ex parte Mann* (1928), 93 J. P. 45; Digest (Supp.).

(*q*) Licensing (Consolidation) Act, 1910, s. 49; 9 Statutes 1015.

(*r*) *R. v. Brakenridge* (1884), 48 J. P. 293; 33 Digest 372, 307.

(*s*) *R. v. Essex JJ., Ex parte Perkins*, [1927] 2 K. B. 475; Digest (Supp.);

R. v. Sussex JJ., Ex parte McCarthy, [1924] 1 K. B. 256; 33 Digest 294, 57.

(*t*) *R. v. Milledge* (1879), 4 Q. B. D. 332; 33 Digest 297, 115, and H.O. Circular Letter; see 43 J. P. 695.

(*u*) Affiliation Orders Act, 1914, s. 1 (3); 2 Statutes 21.

(*a*) 11 Statutes 321.

(*b*) Criminal Justice Administration Act, 1851, s. 10; 4 Statutes 525.

(*c*) Criminal Justice Administration Act, 1914, s. 34 (4); 11 Statutes 385.

paid periodically may be paid in respect of the extra work and expense thereby incurred an amount not exceeding 5 per cent. of the total monies so received by him (*d*).

The salaries paid to clerks to justices vary considerably, largely owing to the differing conditions of their service. Some clerks are full-time officers, debarred from accepting any other appointment or from engaging in private practice, but in many instances the position is merely a part-time one and the clerk may engage in private practice or other work as he pleases.

In a borough having a separate commission of the peace, the borough council are required to furnish a suitable justices' room with offices for the business of the borough justices (*e*), but apart from this it is a matter of arrangement whether the clerk's salary is a personal one or whether it is to include the cost of staff, stationery and other necessary expenses.

In a small petty sessional division it is a common practice for the clerk to be required to provide office accommodation, staff, stationery, etc.; and in the more important divisions an informal arrangement may exist between the standing joint committee and the clerk that a proportion of the salary paid should be allocated to staff employed by the clerk, etc. [799]

Determination and Variation.—The borough justices or the standing joint committee of the county, as the case may be, determine the amount of the salary to be paid to the clerk, and they may vary this from time to time (*f*). There is a right of appeal to the Secretary of State against any such decision, in the first case by the borough council, in the second case by the justices for whom the clerk acts. If the proposal be for a reduction of salary the clerk also has a right of appeal (*g*). A refusal by the responsible authority to increase the clerk's salary is a decision which may similarly be appealed against (*g*). Before coming to a decision to vary a clerk's salary the standing joint committee must consider any representations made by the clerk's own bench (*h*).

A recommendation for variation of salary should be based not on the amount of fees taken but on the nature of the district, the number of cases dealt with, the number of courts held, and the time occupied by attendance at the courts and the transaction of the court business (*i*).

[800]
By whom Payable.—The salary of the clerk to a petty sessional division of a county or in a borough without a separate commission of the peace is payable by the county council (*k*); but in a borough having a separate commission of the peace the salary of the clerk to the justices is payable by the town council (*l*). In the latter case the salary may be paid out of the general rate fund by the treasurer without any formal order of the borough council (*m*). [801]

Superannuation.—The clerk is in the employ of his justices and not

(*d*) Criminal Justice Administration Act, 1914, s. 30 (4); 11 Statutes 383.

(*e*) Municipal Corpn. Act, 1882, s. 100; 10 Statutes 628.

(*f*) Criminal Justice Administration Act, 1914, s. 34 (2); 11 Statutes 385.

(*g*) *R. v. Home Secretary, Ex parte Essex Standing Joint Committee* (1921), 91 L. J. (K. B.) 579; 38 Digest 374, 327.

(*h*) Criminal Justice Administration Act, 1914, s. 34 (8); 11 Statutes 385.

(*i*) H.O. Circular Letter dated May 10, 1915; see 79 J. P. Jo. 247.

(*k*) L.G.A., 1888, s. 84; 10 Statutes 755.

(*l*) *Theftord Corpn. v. Norfolk County Council*, [1898] 2 Q. B. 408; 33 Digest 380, 396.

(*m*) L.G.A., 1933, s. 187; 20 Statutes 408.

in that of the local authority responsible for the payment of his salary ; consequently he does not come within the scope of the Local Government and other Officers Superannuation Act, 1922 (*n*), and there is no other general statutory scheme of superannuation applicable. In some of the larger boroughs there are special schemes of superannuation under which the clerk is pensionable subject to certain conditions. [802]

Fees. *What Fees may be Taken.*—The fees to be taken by a clerk to justices (save in the metropolitan and City of London police courts) are fixed by sect. 6 of the Criminal Justice Administration Act, 1914, and are set out in the Table of Fees in the First Schedule to the Act (*o*). This Table is inclusive save as to certain matters expressly excepted by Part II. of the Schedule ; namely, matters for which fees are authorised to be charged by the Licensing (Consolidation) Act, 1910, applications for billiards, theatre, music and dancing, and cinematograph licences ; appeals under the Valuation (Metropolis) Act, 1869 (*p*), and under sect. 28 of the Pilotage Act, 1913 (*q*), and shipping inquiries under sect. 479 of the Merchant Shipping Act, 1894 (*r*). The clerk has no power to charge a fee for anything not included above ; for where a public official has a duty to perform and no provision is made by statute for his fees he is not entitled to receive any (*s*). The Table of Fees may be varied from time to time by the Secretary of State, in order to meet new or additional duties cast on the courts or clerks or for any other sufficient reason (*t*). [803]

Payment and Recovery.—The presence of the clerk is essential before a fee can be charged, and he is the only person entitled to receive it. The Secretary of State has expressed the view that it would be improper for a justice to receive fees in respect of work done at his own house, even though merely for the purpose of handing the fees over to the clerk (*a*).

The clerk is entitled to be paid his fee at the time the business is done, and he may refuse to act until the proper fee be paid ; he is not bound to give credit (*b*). Should the clerk give credit and not be paid his remedy is by action in the county court (*c*). The attorney of a litigant if he actually dealt with the clerk is liable for the clerk's fee (*d*). [804]

Remission and Repayment.—The justices may remit any fee, for poverty or other reasonable cause ; and if they do so they must sign an entry in a book kept for the purpose and so discharge the clerk from his obligation to account for the fee (*e*). Where a fine is imposed not exceeding five shillings the court must, unless it thinks fit expressly to order otherwise, direct that all fees paid or payable by the informant be remitted or repaid to him (*f*). In apportioning any fine the repayment of any fees paid by the prosecutor is, by sect. 5 of the Criminal Justice Administration Act, 1914, a first charge upon it. [805]

(*n*) 10 Statutes 863 *et seq.*

(*p*) 14 Statutes 558 *et seq.*

(*r*) *Ibid.*, 344.

(*s*) *Re Howe* (1887), 18 Q. B. D. 573 ; 4 Digest 574, 5274.

(*t*) Criminal Justice Administration Act, 1914, s. 6 (3) ; 11 Statutes 374. For variations, see S.R. & O., 1915, No. 279.

(*a*) H.O. Circular Letters, July 29, 1899, and August 11, 1899 ; 63 J. P. 665.

(*b*) *Wray v. Chapman* (1850), 14 Q. B. 742 ; 33 Digest 373, 316.

(*c*) *Drew v. Harris* (1849), 14 J. P. 26.

(*d*) *Langridge v. Lynch* (1876), 34 L. T. 695 ; 33 Digest 399, 1087 ; *Ex parte Reddish* (1850), 20 J. P. Jo. 101 ; 33 Digest 373, 317.

(*e*) Criminal Justice Administration Act, 1851, s. 12 ; 4 Statutes 526.

(*f*) Summary Jurisdiction Act, 1879, s. 8 ; 11 Statutes 326.

(*o*) 11 Statutes 374, 388.

(*q*) 18 Statutes 501.

Accounting.—All fees taken by a clerk must, under a penalty of £20, be paid over by him to the treasurer of the county or borough, as the case may be; and these go in aid of the county or borough funds respectively (g). The responsible local authority may require that all fees and fines payable to the treasurer be accounted for by means of stamps (h). [806]

Duties.—The duties of a clerk are inextricably bound up with those of his justices; broadly speaking the office of the clerk is to assist his justices in the performance of their duties to such extent as they may require; and further to act as their executive officer.

Generally the clerk acts as the servant of his justices and is then not personally liable (i). Nevertheless it has been held that the position of a clerk to justices is of sufficient importance in itself to warrant the grant of the remedy of criminal information in the High Court in the case of a libel upon him (k). [807]

As Legal Adviser to Justices.—The most important duty of the clerk is to act as legal adviser to his justices, both in and out of court. He is responsible for the proper preparation of summonses, warrants, orders and other documents requiring signature by a justice; and as these formal documents are often the only evidence of the acts of justices, and in many cases cannot be amended after signature, it is important that they be drafted accurately (l).

In court the clerk is responsible for the proper conduct of the business and procedure; and he should be alert to point out and advise on points of law arising in the course of the hearing of a case.

In any indictable case the clerk is required by statute to take a proper deposition. In other matters, although there is no statutory obligation, it is usual to take a brief note of the evidence and adjudication. A complete and adequate note, together with a note of the reasons for the court's decision, is absolutely required in applications under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925 (m), for use in case of an appeal to the Divisional Court (n).

It is the duty of the clerk to keep a register of all convictions and orders of his court. In the case of a conviction the exact offence must be clearly shown and the date of its commission given, and an entry must be made if the prisoner pleaded guilty to the charge. The register must be signed by one of the justices constituting the court (o). A copy of an extract from the register, signed by the clerk, is the usual method of proving a summary conviction in other proceedings (p). [808]

As Executive Officer of Justices.—In criminal matters it is the duty of the clerk to see that the decisions of his justices are carried into effect, so far as possible. Where a fine has been imposed, although

(g) Criminal Justice Administration Act, 1851, s. 11 (4 Statutes 526); Justices Clerks Act, 1877, ss. 5, 9 (11 Statutes 321, 323); L.G.A., 1888, s. 84 (10 Statutes 755).

(h) Local Stamp Act, 1809, s. 4; 11 Statutes 317.

(i) See e.g. *Ex parte Haywood* (1868), 3 B. & S. 546; 33 Digest 357, 671.

(k) *Re Great Grimby Magistrates' Clerk* (1879), *Times*, May 9, 1879.

(l) See e.g. *Pearson v. Heys* (1881), 7 Q. B. D. 200; 3 Digest 401, 346.

(m) 9 Statutes 405 *et seq.*

(n) *Barker v. Barker* (1905), 74 L. J. P. 74; 27 Digest 562, 6187; *Wenham v. Wenham* (1906), 95 L. T. 548; 27 Digest 563, 6193; *Bowen v. Bowen* (1908), 73 J. P. 87; 27 Digest 312, 2902; *Royle v. Royle*, [1909] P. 24; 27 Digest 563, 6209.

(o) Summary Jurisdiction Act, 1879, s. 22 (11 Statutes 338); Summary Jurisdiction Rules, 1915, rr. 3—9, see Stone.

(p) Criminal Justice Administration Act, 1914, s. 28 (1); 11 Statutes 382.

there is no statutory duty upon the clerk to enforce payment, the Home Secretary has expressed the opinion that the clerk is naturally the person on whom the obligation falls to see that the penalties imposed by the court are recovered (*g*). Where a fine or other sum of money is adjudged to be paid by a conviction and time to pay is allowed or the defendant is not present, the clerk must deliver or send to the defendant a notice stating the amount due, the time allowed, and the time and place at which payment may be made (*r*). If default be made in payment within the time allowed it will be the duty of the clerk to see that proper process is issued to secure the attendance of the defaulter, to enable inquiry to be made into his means in his presence before a warrant of commitment to prison is issued (*s*). Where for the purpose of enforcing payment a "transfer of fine order" is made (*t*), the clerk to the justices making such order must furnish all available information to the clerk to the justices for the division or place specified in the order (*u*), who will then be responsible for due service of the "notice of transfer order" (*a*) upon the defendant, and for the further steps necessary for enforcement of payment. [808A]

As Accounting Officer.—The clerk is the accounting officer of his court. If any other person receives any money due under a conviction or order of such court he must forthwith pay it over to the clerk (*b*). See also *ante*, p. 408. No stamp duty is payable upon a receipt for the payment of £2 or upwards given by the clerk or on his behalf for money received in respect of a fine or other sum ordered to be paid by a court of summary jurisdiction, or as bail (*c*).

Upon receipt of any payment in respect of a fine the clerk must appropriate it towards repayment of court or police fees already paid by the informant and to payment of other fees due, and the balance is to be paid to the fund or person indicated by the statute under which the fine was imposed. If there be no such indication the balance is to be paid into the fund into which the court fees are paid (*d*).

Any penalties, costs and sums which the clerk receives under any conviction or order of his justices, but does not pay out to the party entitled thereto, must be paid over to the county or borough treasurer, who then becomes responsible to such party (*e*). If the clerk wilfully omits to account for and pay over any such sum (*f*), he is liable to a penalty of £20, to be sued for by the local authority entitled to receive the sum (*g*).

There is no statutory obligation on the clerk to keep a separate banking account for monies received by him by virtue of his office, but it is improper for a clerk to pay such monies into his private account (*h*).

(*g*) H.O. Circular Letters of January 6, 1910, and January 27, 1925.

(*r*) Money Payments (Justices Procedure) Act, 1935, s. 3; Summary Jurisdiction Rules, 1935, Form 16, S.R. & O., 1935, No. 1088.

(*s*) *Ibid.*, s. 11.

(*t*) *Ibid.*, s. 2.

(*u*) Summary Jurisdiction Rules, 1935, r. 5; S.R. & O., 1935, No. 1088.

(*a*) *Ibid.*, Form 16 C.

(*b*) Summary Jurisdiction Act, 1848, s. 81 (11 Statutes 289); Summary Jurisdiction Rules, 1915, r. 21, see *Stone*.

(*c*) Finance Act, 1930, s. 44; 23 Statutes 511.

(*d*) Criminal Justice Administration Act, 1914, s. 5; 11 Statutes 373. As to this fund, see *ante*, p. 408.

(*e*) Justices Clerks Act, 1877, s. 6; 11 Statutes 322.

(*f*) *Ibid.*, s. 9; *ibid.*, 323.

(*g*) Criminal Justice Administration Act, 1914, s. 34 (6); 11 Statutes 385.

(*h*) *Per MacKinnon, J.*, see 97 J. P. Jo. 681.

A true and exact account must be kept of all monies received, showing from whom they were received and to whom they were paid (i). The entries are to be made on the day of receipt. An instalment ledger is to be kept for cases where part payments are received (k). An account of fines, fees and other sums payable by the clerk to the treasurer must be rendered to the local authority quarterly or at such less intervals as they may fix (l); and a return of fines due to the Exchequer giving particulars for the preceding quarter is to be furnished to the H.O. on the 10th day of January, April, July and October (m).

Where a clerk is also the collecting officer he must keep a separate account for every case and enter therein all receipts and payments; and this account is receivable in evidence (n). [809]

Other Duties.—Many other duties fall on occasion upon the clerk; and only a few of the more important can be mentioned here.

Where a licensing district is a county petty sessional division or a borough the clerk to the justices is also clerk to the licensing justices (o).

The clerk must inform the Director of Public Prosecutions of any prosecution before his justices that is withdrawn or not proceeded with within a reasonable time (p).

The clerk is responsible for keeping the register of clubs corrected up to date in accordance with the returns furnished by secretaries of clubs (q); and must notify the Commissioners of Customs and Excise when a new club is entered or an old club ceases to be registered (r).

Under various statutes the clerk must notify to interested persons certain convictions of offenders of a specified class, e.g. soldiers, sailors or airmen; holders of licences to sell intoxicating liquors; clergymen.

Any recognisance fixed by a court of summary jurisdiction may be entered into before the clerk of any such court (s).

By the Probation Rules, 1926 (t), the justices' clerk or one of his assistants is to act as secretary of the probation committee, and he is responsible for the records required to be kept. [810]

Custody of Records.—It is of vital importance that all records in the custody of a clerk to justices by virtue of his office be kept distinct and apart from other documents. In a case where books relating to the work of a deceased justices' clerk were alleged to contain also private entries, a *mandamus* was granted against the executor to deliver up the books (u). [811]

Organisation of Business.—The main duties of a clerk relate to the sittings of his justices as a court of summary jurisdiction. The bulk of the business so arising falls roughly under the following heads:

In Court.—The clerk or a competent deputy must be present to advise the bench and to conduct the proceedings. An usher is useful

(i) Summary Jurisdiction Act, 1848, s. 31; 11 Statutes 289.

(k) Summary Jurisdiction Rules, 1915, r. 13; see Stone.

(l) Justices Clerks Act, 1877, ss. 6, 9 (11 Statutes 322, 323); Summary Jurisdiction Rules, 1915, r. 10, 12; see Stone.

(m) Summary Jurisdiction Rules, 1915, r. 15; see Stone.

(n) *Ibid.*, r. 13.

(o) Licensing (Consolidation) Act, 1910, s. 48; 9 Statutes 1015.

(p) Prosecution of Offences Act, 1879, s. 5 (4 Statutes 697) and regulations thereunder of January 25, 1886; 56 J. P. 602.

(q) Licensing (Consolidation) Act, 1910, s. 92; 9 Statutes 1036.

(r) Finance (1909–10) Act, 1910, s. 48 (6); 9 Statutes 972.

(s) Summary Jurisdiction Act, 1879, s. 42; 11 Statutes 345.

(t) S.R. & O., 1926, No. 577.

(u) *R. v. Rastrick* (1858), 6 W. R. 654; 38 Digest 372, 309.

to keep order, marshal parties and witnesses, and attend on the justices and the clerk. A gaoler is required to produce and take charge of prisoners; and a warrant officer to deal with persons attending on summons. [812]

Clerk's Office.—A competent clerk should be in attendance, to deal with inquiries, draft and fill in forms, take fees, receive and pay out periodical payments and other monies, keep the necessary accounts, and attend to other incidental business. [813]

Gaoler's Office.—The gaoler should be responsible for the safe custody of prisoners, their production before the court, and their release upon payment of any fines and costs ordered to be paid, or their proper disposal if to be detained in custody. There must be a female attendant available for women and girl prisoners. [814]

Warrant Officer.—The warrant officer should be responsible for the proper service of summonses and other documents and the due execution of warrants and similar process; and he should keep the necessary records relating to these matters. He should be in attendance on the court whilst summonses are being dealt with. [815]

London.—The position is the same in London as regards clerks of petty sessional courts, but in the City the clerks are appointed by the Court of Aldermen. [816]

Clerks to Metropolitan Police Magistrates.—These are appointed by the Secretary of State and their salaries are charged to the metropolitan police fund. Persons eligible to be chief clerks must be solicitors or have served as clerk in a metropolitan police court or as a clerk in a petty sessional division in the metropolitan police district for at least seven years (a). Their duties are the same as those of clerks to justices. [817]

Clerks to Chairmen and Deputy Chairmen of Quarter Sessions.—Sects. 3, 4 of the Quarter Sessions (London) Act, 1896 (b), empower the chairman and deputy chairman of the court of quarter sessions for the County of London each to appoint a clerk, who is removable at pleasure. The Act fixes the salaries, but these were increased by sect. 47 of the L.C.C. (General Powers) Act, 1931 (c). [818]

(a) See Metropolitan Police Courts Act, 1889, ss. 5, 42, 43, 46—47 (11 Statutes 250, 256, 267); Metropolitan Police Courts Act, 1897, s. 1 (11 Statutes 359); Metropolitan Police Courts Act, 1840, s. 7 (11 Statutes 263).

(b) 11 Statutes 358.

(c) 24 Statutes 277.

JUSTICES' COURTS

See OFFICIAL BUILDINGS.

JUSTICES OF THE PEACE

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See also titles :

ADVISORY COMMITTEE ;
JUSTICES' CLERKS ;
JUVENILE COURTS ;

LORD LIEUTENANT ;
STIPENDIARY MAGISTRATES ;
SUMMARY PROCEEDINGS.

Introduction.—The “justice of the peace” was originally of the county, and the “magistrate” was of the borough, and a survival of the latter is found in the common reference to a mayor as “the chief magistrate of the borough.” Now that the method of appointment in counties and boroughs is the same, the distinction has disappeared, and the terms are generally used indifferently. As, however, the Lord Mayor and any alderman of the City of London, and any metropolitan or stipendiary magistrate has, when sitting as a court, the powers of two or more justices (*a*), it seems misleading that either should be referred to as *a* justice. It appears preferable to restrict the title of magistrate to these officers, distinguishing others by the use of the term “justice of the peace.”

The powers of a justice are derived from the Commission of the Peace (*b*) and from statute. A new commission does not discontinue indictments and suits already begun before justices, and the new justices may hear and finally determine as the old could have done (*c*). The death of the Sovereign no longer necessitates a fresh appointment for any person holding office under the Crown (*d*), including a justice of the peace (*e*); and the preferment of a justice to a higher rank or office does not abate his commission (*f*). [819]

Appointment.—The usual method of appointment of justices is by nomination to the commission of the peace. See the title **ADVISORY COMMITTEE**. In addition to the justices so appointed, holders of certain offices, unless personally disqualified, become justices whilst continuing in office, under various general statutory provisions. The

(*a*) Summary Jurisdiction Act, 1879, s. 20 (10); 11 Statutes 332.

(*b*) See title **ADVISORY COMMITTEE** at p. 153 of Vol. I.

(*c*) 1 Edw. 6, c. 7, s. 5; 11 Statutes 225.

(*d*) Demise of the Crown Act, 1901; 8 Statutes 197.

(*e*) H.O. Circular Letter; see 74 J. P. Jo. 233.

(*f*) 1 Edw. 6, c. 7, s. 4; 11 Statutes 225.

mayor of a borough, whether there be a separate commission of the peace or not, is a justice for the borough during his year of office and the following year (*g*); and in a non-county borough the mayor is also a justice for the county during his term of office (*h*). The chairman of a county council is to be a justice of the county (*i*), and the chairman of an urban or R.D.C. is to be a justice for the county (or each county) in which the district is situate (*k*). But the deputy mayor of a borough or the vice-chairman of a council are not by virtue of their offices to be justices (*l*).

A stipendiary magistrate is to be *ex officio* a justice for the borough, as is also the recorder (*m*). The judge of any county court for the time being may be included in the commission of the peace for the jurisdiction within which the court is held, and every person appointed to be judge of that court is deemed to be in the commission as if personally named therein whether or not he has ceased to hold such office (*n*). As to the chief magistrate at Bow Street and the metropolitan police commissioners acting *ex-officio* as justices for certain counties, see *post*, p. 422.

A person who is *ex officio* a justice, although he may have the power to appoint a deputy to act in his stead in his office, cannot delegate his magisterial powers (*o*); and it appears doubtful whether even the Crown can delegate the power of appointing a justice of the peace (*p*). In addition to the *ex officio* justices appointed under the general provisions above mentioned there are under special provisions certain high officers of State, dignitaries, and others who are justices for the county at large or for certain specified jurisdictions (*q*). [820]

Qualification for Appointment.—At one time a property qualification was required for a county justice, but this was abolished in 1906 (*r*). There was never any such requirement for a borough justice. A person may be appointed a justice for the county if he resides in it or within seven miles of it (*s*). It is understood that the law officers of the Crown have advised that once appointed to the commission a justice may take the oath and act although he may have ceased to reside within the seven-mile limit. A justice for a municipal borough must, however, whilst acting reside within seven miles of the borough or occupy property within the borough; although it is not necessary that he be a burgess (*t*). A woman is not disqualified from being appointed to the commission of the peace merely by reason of her sex or marriage (*u*). [821]

Disqualifications for Appointment.—A debtor adjudged bankrupt may not be appointed a justice, or if he is a justice continue to act as such, until the adjudication be annulled or until the expiration of five

(*g*) L.G.A., 1933, s. 18 (7); 26 Statutes 314; and see *Wilson v. Strugnell* (1881), 7 Q. B. D. 548; 33 Digest 71, 458.

(*h*) *Ibid.*, s. 18 (8).

(*i*) *Ibid.*, s. 3 (5); 26 Statutes 307.

(*k*) *Ibid.*, s. 33 (5); *ibid.*, 320.

(*l*) *Ibid.*, ss. 5 (3), 20 (3), 34 (2); *ibid.*, 308, 315, 321.

(*m*) Municipal Corpn. Act, 1882, ss. 161, 163; 10 Statutes 628, 629.

(*n*) County Courts Act, 1934, s. 10; 27 Statutes 97.

(*o*) *Jones v. Williams* (1825), 3 B. & C. 762; 33 Digest 283, 4.

(*p*) *Ibid.*, and 27 Henry 8, c. 24, s. 2; 11 Statutes 222.

(*q*) See title ADVISORY COMMITTEE at pp. 153, 154 of Vol. I.

(*r*) Justices of the Peace Act, 1906, s. 1; 11 Statutes 363.

(*s*) *Ibid.*, s. 2; *ibid.*, 368.

(*t*) Municipal Corpn. Act, 1882, s. 157; 10 Statutes 627.

(*u*) Sex Disqualification (Removal) Act, 1919, s. 1; *ibid.*, 79.

years from discharge, unless he obtains his discharge with a certificate that the bankruptcy was caused by misfortune without any misconduct on his part, when the disqualification ceases forthwith (*a*).

A person convicted on indictment of a corrupt practice under the Corrupt and Illegal Practices Prevention Act, 1883, is incapable during a period of seven years from the date of conviction of holding the office of justice (*b*).

The holding of certain offices is incompatible with the position of a justice. The sheriff of a county is disqualified for so long as he is sheriff from acting as a justice for the county and any act so done by him is void (*c*). A clerk to justices, if appointed to the commission for the same county or borough, would be deemed to have vacated his office; and the position would be the same if the clerk, by election to some other office, became a justice (*d*). A justice actively exercising his duties as such in any probation area cannot concurrently be a probation officer within that area (*e*).

There are certain professional partial disqualifications. Nowadays a clergyman will not usually be appointed unless a suitable layman is not available, though clergymen frequently held this office in the past (*f*). A solicitor is eligible for appointment, but if appointed a county justice neither he nor his partner can practise directly or indirectly before the justices of the county or of any borough within the county (*g*). There is no similar statutory restriction attaching to the appointment to a borough bench of a solicitor, but it is the practice for the Lord Chancellor to require an undertaking that neither the solicitor nor his partner will practise before that bench. The mayor of a metropolitan borough is not disqualified from being a justice *ex officio* by the fact that he is a solicitor practising in the County or City of London; but he must not practise before the county justices, although his partner is not so debarred (*h*). [822]

Oaths of Office.—The oath of allegiance and the judicial oath are to be taken by all justices in the prescribed forms (*i*); or an affirmation may be made in lieu of oath (*k*). Any justice declining or neglecting to take such oath when duly tendered to him is to vacate or be disqualified from holding his office (*l*). The oaths may be taken before such person as His Majesty may appoint, or in open court either before a High Court judge or at the quarter sessions (*m*). Justices should, however, take the oaths at the court of quarter sessions, and only in exceptional cases should they take them before the Lord Chancellor or in the High Court.

A borough justice cannot act until he has taken the oaths, and has

(*a*) Bankruptcy Act, 1883, s. 82 and 1890, s. 9; 1 Statutes 581, 586.

(*b*) *Ss.* 6 (3), (4); 7 Statutes 468.

(*c*) Sheriffs Act, 1887, s. 17; 17 Statutes 1112.

(*d*) *R. v. Douglas*, [1898] 1 Q. B. 500; 33 Digest 288, 42. See also 70 J. P. Jo. 493.

(*e*) Probation Rules, 1926, r. 29; S.R. & O., 1926, No. 577.

(*f*) See 19 Sol. J. 890.

(*g*) Justices of the Peace Act, 1906, s. 3 (11 Statutes 364); Solicitors Act, 1932, s. 54 (25 Statutes 810).

(*h*) London Government Act, 1890, s. 24 (11 Statutes 1238); Solicitors Act, 1932, s. 54; 25 Statutes 819.

(*i*) Set out in ss. 2, 4 of the Promissory Oaths Act, 1868; 3 Statutes 381.

(*k*) *Ibid.*, s. 11.

(*l*) *Ibid.*, s. 7.

(*m*) Promissory Oaths Act, 1871, s. 2; 3 Statutes 389.

also made the declaration set out in Form B of the Eighth Schedule to the Municipal Corporations Act, 1882, before the mayor or two aldermen or councillors (*n*). The oaths may be taken before the mayor or any two justices, whilst the mayor may be sworn in before two of the borough justices, or, if there be not two, then before two councillors (*o*).

A district council chairman, before acting as a county justice, must, unless he is already a county justice, take the oaths required to be taken by a county justice (*p*). He may, however, take the oaths before two county justices in petty sessions (*q*).

The mayor of a non-county borough on becoming *ex officio* a county justice must take the oaths as such, unless he has already done so, in addition to the oaths as a borough justice (*r*). A justice already on the commission need not take the oaths again on the issue of a fresh commission during the reign of a Sovereign (*s*); but it is proper and desirable that he should be sworn in again after the death of a Sovereign (*t*).

It was at one time customary for a justice on qualifying to pay a fee to the clerk of the peace; but no such fee can be legally recovered unless it be authorised by the Table of Fees (*u*).

The acts of a justice who has not duly qualified are not absolutely void; it is unlawful for the justice so to act, but in the public interest the acts would not be held invalid (*x*). [823]

Removal from Office.—A justice ceases to be a justice if his name be omitted from a new commission. The name of a justice may be removed from an existing commission by writ of discharge or *supersedeas* under the Great Seal; and a justice *ex officio* may be similarly removed from office (*a*). A justice by virtue of his office will naturally cease to be entitled to act as a justice if he is removed from his qualifying position. A debtor adjudged bankrupt is disqualified from acting as a justice in the same circumstances as would disqualify him for appointment; as to which see *ante*, p. 413. A conviction on indictment for any corrupt practice vacates the office of justice of the peace (*b*); and if a justice be reported by an election court or election commissioners to have been guilty of a corrupt practice in reference to an election, the Director of Public Prosecutions must report the matter to the Lord Chancellor, who will then have the same power to remove a justice acting as such by virtue of being a mayor or ex-mayor, as if he were named in a commission (*c*). [824]

Precedence of and Amongst Justices.—A justice of the peace is an esquire by virtue of his office and takes social precedence accordingly, after the younger sons of knights. As between justices precedence

(*n*) Municipal Corpn. Act, 1882, s. 157 (2); 10 Statutes 627. A mayor is not required to make the declaration. See L.G.A., 1933, s. 18 (10); 26 Statutes 315.

(*o*) Municipal Corpn. Circular 42 (207).

(*p*) L.G.A., 1933, s. 33 (5); 26 Statutes 320.

(*q*) H.O. Circular of 1895. See 59 J. P. 185.

(*r*) L.G.A., 1933, s. 18 (7), (8); 26 Statutes 314.

(*s*) Justices Oaths Act, 1766; 11 Statutes 233.

(*t*) H.O. Circular, see 74 J. P. Jo. 233; 100 J. P. Jo. 50, and the press notice issued by the Home Office on 22 January, 1936.

(*u*) *Mauld v. White* (1896), 60 J. P. 567; 23 Digest 380, 395.

(*x*) *Margate Pier Co. v. Hannam* (1810), 3 B. & Ald. 266, per Abbott, C.J.; 33 Digest 288, 37.

(*a*) Justices of the Peace Act, 1906, s. 4; 11 Statutes 364.

(*b*) Corrupt and Illegal Practices Prevention Act, 1883, ss. 6 (3), (4); 7 Statutes 468.

(*c*) *Ibid.*, s. 38 (6); *ibid.*, 485.

depends upon the order of their names in the commission, without regard to the date when they took the oaths. In the case of *ex-officio* justices, seniority is reckoned from the commencement of the year of office. If, therefore, a chairman of a district council is re-elected chairman for successive years, his seniority as a justice dates only from the commencement of the last or current year of office (*d*). The H.O. recommends that there be an annual election of chairman and deputy-chairman of the justices (*e*).

Within a borough, the mayor is entitled to preside at all meetings of justices, except those of county justices, where he is only so entitled when the county justices are acting in relation to the business of the borough (*f*). Borough matters are only "the business of the borough" when borough justices have taken exclusive seisin. If county justices having concurrent jurisdiction have issued a summons for an offence committed within the borough it is earmarked as county business, and the mayor is not entitled to preside at the court which deals with it (*g*). The mayor is not entitled to preside if the stipendiary magistrate be sitting (*h*). If a justice be sitting with a stipendiary and they cannot agree the latter may adjudicate alone (*i*). [825]

Voting Amongst Justices.—The presiding justice has not a casting vote. If the bench be equally divided and unable to reach a decision the hearing should be adjourned in order that the case may be reheard before other justices (*k*), unless one justice be willing to retire and so permit a majority decision to be made (*l*). [826]

Disqualification from Acting by Reason of Interest.—Broadly speaking, a justice must not act in any matter in which he has an interest or in which he might reasonably be suspected of having an interest. Any direct pecuniary interest, however small, is enough to disqualify (*m*). Any other interest, direct or indirect, will disqualify if it would give rise to a reasonable suspicion of bias, provided there is a real likelihood of bias (*n*) and not merely a possibility (*o*). Special considerations apply to the peculiar jurisdiction of justices in licensing matters, and High Court decisions on "interest" in these cases exhibit a much more stringent interpretation of "bias" than in cases concerning the ordinary judicial functions of justices. If an interested justice takes any part in the hearing of a case or influences the decision in any way, the adjudication will be annulled by the High Court; except in the case of an acquittal, when the defendant is entitled to rely on the fact that he has been in peril (*p*). "Interest" in a justice may, however, be waived by the party entitled to object, and if so it will not furnish ground for upsetting the decision (*q*).

(*d*) H.O. Circular Letter, October 16, 1907; see 63 J. P. 120.

(*e*) See 88 J. P. Jo. 120.

(*f*) L.G.A., 1933, s. 18 (9); 26 Statutes 814.

(*g*) *Lawson v. Reynolds*, [1904] 1 Ch. 718; 33 Digest 287, 30.

(*h*) L.G.A., 1933, s. 18 (8); 26 Statutes 814.

(*i*) *R. v. Thomas, Ex parte O'Hare*, [1914] 1 K. B. 32; 33 Digest 316, 323.

(*k*) *Bagg v. Colquhoun*, [1904] 1 K. B. 554; 33 Digest 346, 569.

(*l*) *Ex parte Evans*, [1894] A. C. 16; 33 Digest 402, 1127.

(*m*) *R. v. Cambridge Recorder* (1857), 8 E. & B. 637; 33 Digest 291, 74; *R. v. Rand* (1860), L. R. 1 Q. B. 230; 33 Digest 292, 84.

(*n*) *R. v. Tempest* (1902), 66 J. P. 472; 33 Digest 296, 110.

(*o*) *R. v. Rand, ubi supra*.

(*p*) *R. v. Simpson, Ex parte Smithson*, [1914] 1 K. B. 66; 33 Digest 301, 159.

(*q*) *Wakefield Local Board v. West Riding and Grimsby Rail. Co.* (1865), L. R.

There are statutory disqualifications for interest in a number of Acts relating to certain trades. These prohibit, generally speaking, employers and/or employees and/or certain relatives of either, and/or trade union officials from being members of a court dealing with an offence under the Act relating to the particular trade with which they are connected (*r*). On the other hand certain Acts operate to permit a justice to act who might otherwise be open to objection on the ground of bias, or suspicion thereof. By sect. 2 of the Justices of the Peace Act, 1867 (*s*), no disqualification is to attach to a justice acting in proceedings under an Act put into operation by a local authority, merely by reason of the fact that he is one of several ratepayers or liable with others to contribute to or be benefited by any fund or rate to which penalties under the Act are applicable (*t*). A justice who is liable to pay gas rent or some other charge under the Gasworks Clauses Act, 1871, is not thereby to be disqualified from acting in execution of that Act (*u*). Similarly a justice is not disqualified from acting in cases under the Salmon and Freshwater Fisheries Act, 1923, by reason only of membership of a fishery board or subscription to a society for the protection of fish; but he must not adjudicate on an offence committed on his own land or as to a fishery which he owns or occupies (*a*). [827]

Territorial Jurisdiction.—The jurisdiction of a borough justice does not extend beyond the limits of the borough, but for offences committed or matters arising within that area he has the same powers as a county justice has in the county, except at a court of gaol delivery or quarter sessions (*b*). The law officers of the Crown have advised that the mayor and ex-mayor of a borough without a separate commission of the peace, being the only justices of the borough, may hold special sessions and adjudicate summarily on indictable cases in a petty sessional court-house; but the power of appointing days for holding such sessions lies not with them but with the justices for the division of the county within which the borough is situate (*c*).

County justices have concurrent jurisdiction with borough justices in a borough with no separate court of quarter sessions (*d*). Also county justices may technically have the same jurisdiction in a quarter sessions borough, unless that borough was exempt from their jurisdiction before the passing of the Municipal Corporations Act, 1835 (*e*), or has the benefit under charter of a non-intromittant clause; but in practice the jurisdiction is not exercised. If a matter be earmarked by one set of justices the other set with concurrent jurisdiction are not to take

1 Q. B. 84; 33 Digest 301, 157; *R. v. Byles, Ex parte Hollidge* (1912), 77 J. P. 40; 33 Digest 301, 155.

(*r*) For examples see: Factory and Workshop Act, 1901, s. 144; 8 Statutes 591; Trade Union Act, 1871, s. 22; 19 Statutes 647; Bread Act, 1836, s. 15; 8 Statutes 857; Licensing (Consolidation) Act, 1910, s. 40; 9 Statutes 1012; Coal Mines Act, 1911, s. 103 (2); 12 Statutes 134.

(*s*) 11 Statutes 312.

(*t*) For other instances see: Municipal Corpn. Act, 1882, s. 158 (2); 10 Statutes 628; Justices Jurisdiction Act, 1742, s. 1; 11 Statutes 229; P.H.A., 1875, s. 258; 13 Statutes 733; *R. & V.A.*, 1925, s. 31 (11); 14 Statutes 660.

(*u*) S. 46; 6 Statutes 1274.

(*a*) S. 76; *ibid.*, 826.

(*b*) Municipal Corpn. Act, 1882, s. 158; 10 Statutes 627.

(*c*) The position is far from clear, however; see Municipal Corpn. Chronicle, June 1890, p. 231, and 76 J. P. Jo. 565; see also *Wilson v. Strugnell* (1881), 7 Q. B. D. 548; 33 Digest 71, 458.

(*d*) Municipal Corpn. Act, 1882, s. 154; 10 Statutes 626.

(*e*) *Ibid.*

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separate seisin of it (*f*); but nevertheless borough justices may sit with county justices who have assumed jurisdiction over borough business (*g*).

It appears that the acts of county justices within a borough in which they have no jurisdiction are absolutely void (*h*). The jurisdiction of a county justice extends over the whole of the county and he may act in any division of the county (*i*), except where by some special provision his powers are confined to his own petty sessional division. The Lord Chancellor, however, takes a serious view of a justice sitting on a bench outside his usual division, save in very exceptional circumstances, owing to the suspicion of bias which might obviously be aroused (*k*). The jurisdiction of the Cinque Port justices will be found dealt with in the title CINQUE PORTS AND THEIR LIBERTIES. [828]

Executive Powers.—The justice was many years ago described as “the State’s man of all work,” and it was added, “Long ago lawyers abandoned all hope of describing the duties of a justice in any methodic fashion, and the alphabet has become the one possible connecting thread.” Every year since has added its quota to the burden (*l*); and it is therefore not possible here to do more than indicate some of the more important duties. The general tendency has been for the justice to lose his executive and administrative powers, but to add to his judicial duties. The duty of acting *ex officio* as a poor law guardian was abolished by sect. 20 of the L.G.A., 1894, and that of allowing rates by sect. 4 (1) of the R. & V.A., 1925 (*m*). Perhaps the best known relic of the executive power of a justice is that of making the statutory proclamation and calling upon the military to act if need be, in case of riot (*n*). A power which has been widely used in recent years is that of appointing special constables (*o*). A widely used and very useful provision is that enabling a justice to take an affidavit or a statutory declaration in a number of specified matters (*p*). [829]

Administrative Powers.—In 1888 many of the administrative duties of justices were transferred to county councils, but certain matters relating to police, justices’ clerks, etc., were assigned to the standing joint committee for the county, of whom one-half are to be justices (*q*). Under various Acts powers are given to justices to act as the licensing authority, notably in connection with the grant of licences to deal in intoxicating liquors (*r*). In places to which Part IV. of the P.H.As. Amendment Act, 1890 (*s*), applies, these licensing justices also grant music and dancing licences. Other licensing powers are exercised

(*f*) *Lawson v. Reynolds*, [1904] 1 Ch. 718; 33 Digest 287, 30.

(*g*) *R. v. Wilkinson* (1891), 7 T. L. R. 534; 33 Digest 287, 33.

(*h*) *Talbot v. Hubble* (1741), 2 Str. 1154; 33 Digest 286, 20.

(*i*) *R. v. Beckley* (1887), 20 Q. B. D. 187; 33 Digest 308, 275; *Caistor R.D.C. v. Taylor* (1907), 71 J. P. 310; 33 Digest 308, 277.

(*k*) See 87 J. P. Jo. 353.

(*l*) The current edition of Stone’s Justices Manual has expanded to well over 2,000 pages.

(*m*) 14 Statutes 623.

(*n*) Riot Act, 1714; 4 Statutes 340.

(*o*) Special Constables Acts, 1831 and 1923; 12 Statutes 759, 895; Municipal Corps. Act, 1882, s. 196; 10 Statutes 688.

(*p*) Statutory Declarations Act, 1835, s. 18; 8 Statutes 198.

(*q*) L.G.A., 1888, s. 30; 10 Statutes 708; and see title STANDING JOINT COMMITTEE.

(*r*) Licensing (Consolidation) Act, 1910, s. 1; 9 Statutes 985.

(*s*) 13 Statutes 843.

under sect. 208 of the Lunacy Act, 1890 (*l*), and under sect. 2 of the Moneylenders Act, 1927 (*u*). The justices of every county and quarter sessions borough also appoint annually justices (*a*), each of whom is a "judicial authority" under the Lunacy and Mental Deficiency Acts, and in certain cases they appoint visiting justices for the licensed houses, institutions for mental defectives and defectives under guardianship within their jurisdiction (*b*). Certain justices are also appointed as a committee to visit, inspect and report upon any local prisons within the district (*c*). [880]

Judicial Powers.—Important as the foregoing duties may be it is clear that a justice's most responsible and important powers are those exercised by him as an examining magistrate, as a court of summary jurisdiction, and in the case of a county justice as a member of the court of quarter sessions. As an examining magistrate, it is his duty under the Indictable Offences Act, 1848 (*d*), to hear the evidence against any person accused of an indictable offence, and to decide whether or not there is sufficient to commit the accused to take his trial either at assizes or sessions.

A court of summary jurisdiction may consist of a single justice, but a petty sessional court must consist of two or more justices sitting in a petty sessional court-house (*e*). By sect. 20 (8), (9) of the Summary Jurisdiction Act, 1879 (*f*), an indictable offence dealt with summarily can only be tried by a petty sessional court held after public notice of the sitting has been given, and any other case arising under the Act of 1879, or any later Act, which is triable by a court of summary jurisdiction can only be heard by a court consisting of two or more justices. A justice will, therefore, generally sit with one or more other justices as a petty sessional court, in dealing with a great number of offences, some trivial, many serious. Among the latter are a number of indictable offences which may by consent of the accused be disposed of summarily.

Additional work will be cast upon justices from January, 1936, by the Money Payments (Justices Procedure) Act, 1935 (*g*), a statute designed to reduce the number of persons sent to prison in default of payment of fines or other sums of money. Although imprisonment is the ultimate sanction for such default it is not to be imposed as a matter of course. Time for payment of any fine should be allowed save for special reasons (*h*); and where such time is allowed the defendant may be placed under supervision pending payment (*i*). If default be made in payment the court may impose a term of imprisonment only after inquiry has been made in the defendant's presence as to his means (*k*).

(*l*) 11 Statutes 91.

(*u*) 12 Statutes 226.

(*a*) Lunacy Act, 1890, s. 10; 11 Statutes 21.

(*b*) *Ibid.*, s. 177 (1) (*ibid.*, 79); Mental Deficiency Act, 1913, s. 40 (1) (*ibid.*, 188).

(*c*) Prison Act, 1877, s. 13; 13 Statutes 340.

(*d*) 4 Statutes 481 *et seq.*

(*e*) Cf. the definitions of these terms in s. 13 (11), (12) of the Interpretation Act, 1889; 18 Statutes 997.

(*f*) 11 Statutes 332.

(*g*) 25 & 26 Geo. 5, c. 40.

(*h*) C. J. A. Act, 1914, s. 1; 11 Statutes 371.

(*i*) Money Payments (Justices Procedure) Act, 1935, ss. 5, 6.

(*k*) *Ibid.*, s. 1 (3).

A court of summary jurisdiction has also a limited civil jurisdiction ; as for instance under the Employers and Workmen Act, 1875 (l), and under a number of statutes by which payment of certain monies due to public departments or local authorities may be enforced as civil debts. Such a court has also very important quasi-civil powers, including the power to make orders in favour of a wife or husband whose spouse has been guilty of certain matrimonial offences (m); and upon justices is also imposed the duty of adjudicating upon the paternity of an illegitimate child and making an order for its maintenance (n). If default be made in payment under such order, or under an order similarly enforceable, the defendant may be committed to prison ; but he must not be so committed unless it appears, after inquiry made in his presence, that the failure to pay was due either to his wilful refusal or culpable neglect (o). A defaulting ratepayer is similarly protected (p).

At the quarter sessions for a county, the chief amongst many other functions of the justices is to deal with indictable offences committed from courts of summary jurisdiction. In counties, the court of quarter sessions delegate their functions with regard to appeals from courts of summary jurisdiction (q), appeals from assessment committees in rating matters (r) and as confirming and compensation authority under the Licensing (Consolidation) Act, 1910 (s), to committees consisting of some of their number. In boroughs with separate courts of quarter sessions, the functions with regard to appeals and rating appeals are exercised by the recorder sitting alone (t). [831]

Actions Against and Protection of Justices.—Any act of a justice done in excess of jurisdiction may be quashed by the High Court. Conversely, if a justice refuse without lawful reason to act in a matter within his jurisdiction he may be commanded by the High Court to perform the act ; and no action may thereafter be brought against the justice who acts in obedience to such rule (u). The High Court, however, will not interfere where the matter is one within the discretion of justices, unless *mala fides* be established ; or unless the act left undone be merely a ministerial one (a). A justice who acts with a malicious or corrupt motive is guilty of a misdemeanour and may be proceeded against by indictment ; or by way of criminal information in the King's Bench Division. But this does not extend to cases of mere error or even illegality if the intention was good or if the corruptness be not clear and apparent. No criminal remedy will lie if a civil action be persisted in (b).

No civil action may be brought against a justice for an act done within his jurisdiction unless such act be alleged to have been done

(l) 11 Statutes 494 *et seq.*

(m) Summary Jurisdiction (Married Women) Act, 1895 ; 9 Statutes 405.

(n) Bastardy Laws Amendment Act, 1872, s. 4 ; 2 Statutes 15.

(o) Money Payments (Justices Procedure) Act, 1935, s. 8.

(p) *Ibid.*, s. 10.

(q) Summary Jurisdiction (Appeals) Act, 1933, s. 7 (1) ; 26 Statutes 553.

(r) R. & V.A., 1925, s. 32 (1) ; 14 Statutes 660.

(s) Ss. 2, 6 ; 9 Statutes 986, 989.

(t) Summary Jurisdiction (Appeals) Act, 1933, s. 7 (7) ; 26 Statutes 554 ; R. & V.A., 1925, s. 32 (7) ; 14 Statutes 661.

(u) Justices Protection Act, 1848, s. 5 ; 13 Statutes 432.

(a) *Staverton Churchwardens v. Ashburton Churchwardens* (1855), 4 E. & B. 526, *per* CAMPBELL, L.C.J. ; 33 Digest 810, 293.

(b) *R. v. Fielding* (1759), 2 Burr. 719 ; 33 Digest 306, 250.

maliciously and without reasonable and probable cause (c). No such allegation is necessary if the act complained of was done in excess of jurisdiction or without jurisdiction; but if the action be founded upon anything done under a conviction or order or under a warrant for appearance followed by a conviction or order, that conviction or order must first be quashed on appeal or by the King's Bench Division (d).

No action can be founded upon a warrant for appearance not followed by a conviction or order, or upon a warrant for an alleged indictable offence, if a summons were previously served and disobeyed (e); nor for anything done under a warrant of distress or commitment upon any conviction or order which is affirmed upon appeal, by reason of any defect in the conviction or order (f).

A mere irregularity is not an excess of jurisdiction (g); and a justice is not liable for a mistaken decision on a point of law within his jurisdiction (h); nor for granting in good faith a warrant of distress or commitment consequent upon a conviction or order, unless he was a member of the adjudicating court (i). [832]

A justice is within the purview of the Public Authorities Protection Act, 1893 (k); and the limitation of time thereunder for taking proceedings is often of special importance in view of the necessity previously mentioned of obtaining the quashing of a conviction or order before an action can be brought.

If a plaintiff be entitled to recover, and proves the levying or payment of a penalty or sum of money, or imprisonment, under a conviction or order, then he is not entitled to recover in damages such penalty or sum or to receive more than twopence damages in respect of the imprisonment, or to receive any costs, if it be proved that he was guilty of the offence for which he was convicted or liable to pay the sum ordered, and that the imprisonment suffered was within the maximum allowed by law (l).

An action will not lie against a justice for defamatory observations made by him in the course of judicial proceedings (m), but he is apparently not entitled to the same immunity if the observations were not made in a "court" (n). Any costs incurred by a county justice in defending legal proceedings taken against him in respect of any order made or act done in the execution of his duty as such justice may be paid out of the county fund to such extent as may be sanctioned by the standing joint committee (o). There does not, however, appear to be any power of paying costs incurred by borough justices. [833]

London.—The undermentioned are justices of the peace by virtue of their office: (1) the lord mayor and aldermen of the City of London;

(c) Justices Protection Act, 1848, s. 1; 13 Statutes 450.

(d) *Ibid.*, s. 2; *ibid.*, 451.

(e) *Ibid.*, s. 2; *ibid.*

(f) *Ibid.*, s. 6; *ibid.*, 453.

(g) *Bott v. Ackroyd* (1850), 28 L. J. (M. C.) 207; 33 Digest 361, 713.

(h) *Sommerville v. Mirehouse* (1860), 1 B. & S. 652; 33 Digest 404, 359.

(i) Justices Protection Act, 1848, s. 3; 13 Statutes 452.

(k) 13 Statutes 455.

(l) Justices Protection Act, 1848, s. 13; 13 Statutes 453.

(m) *Lowe v. Llewellyn*, [1906] 1 K. B. 487; 32 Digest 104, 1356.

(n) *Royal Aquarium and Summer and Winter Garden Society v. Parkinson*, [1892] 1 Q. B. 431; 33 Digest 104, 699.

(o) L.G.A., 1888, s. 66; 10 Statutes 740.

(2) the mayor of each metropolitan borough (*p*); and (3) the chairman of the L.C.C. (*q*). The chief magistrate at Bow Street police court becomes a justice of the peace for Berkshire on his name being inserted in the commission for that county (*r*), and the commissioner and assistant commissioners of metropolitan police are *ex officio* justices of the peace for the counties of London, Middlesex, Surrey, Hertford, Essex, Kent, Berkshire and Buckinghamshire (*s*).

In the City of London, the lord mayor and aldermen have alone the prescriptive right of acting as justices of the peace (Royal Charter, 1742). Their power is co-extensive with the city, while that of the justices of the County of London is co-extensive with the rest of the county. The lord mayor, aldermen and recorder have quarter sessions jurisdiction, but most of their duties have been transferred to the Central Criminal Court, the Court of Common Council, and the L.C.C. by sects. 41 (1), 42 (10) of the L.G.A., 1888 (*t*).

For provisions as to quarter sessions in the County of London, see sects. 40, 42 of the L.G.A., 1888, and S.R. & O., 1932, No. 418. A court of quarter sessions is held for the borough of Southwark. The proceedings are now purely formal. Under sect. 43 of the L.C.C. (General Powers) Act, 1895 (*u*), the L.C.C. could pay a pension to the chairman of the court of quarter sessions of the County of London, but by the Quarter Sessions (London) Act, 1896 (*v*), provision is made for the grant by the Crown of pensions to the chairman and deputy chairman. Any pension granted under this Act is payable out of the county fund by the L.C.C. Provision is also made in sect. 2 of the same Act (*b*) for the appointment of deputies to act in the absence of the chairman or deputy chairman.

Sect. 8 of the Summary Jurisdiction (Appeals) Act, 1933 (*c*), provides that the powers and duties of a court of quarter sessions with respect to appeals to which the Act applies shall, in the case of quarter sessions for the County of London, be exercised and performed by courts of quarter sessions constituted in accordance with the provisions of the section.

For metropolitan police magistrates, see title STIPENDIARY MAGISTRATES. [884]

(*p*) London Government Act, 1809, s. 24; 11 Statutes 1238.

(*q*) L.G.A., 1888, s. 2 (5); 10 Statutes 687.

(*r*) Indictable Offences Act, 1848, s. 31; 4 Statutes 500.

(*s*) Metropolitan Police Acts, 1829, s. 1; 1830, s. 4; 1856, s. 2: 12 Statutes 743, 708, 810; L.G.A., 1888, s. 95; 10 Statutes 759.

(*t*) 10 Statutes 720, 722.

(*u*) 11 Statutes 1219.

(*v*) *Ibid.*, 358.

(*b*) Amended by s. 60 of the L.C.C. (General Powers) Act, 1935.

(*c*) 26 Statutes 554.

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See also titles :

ADOPTION OF CHILDREN ;	FIT PERSON, LOCAL AUTHORITY AS ;
APPROVED SCHOOLS ;	INFANT LIFE PROTECTION ;
BLIND, DEAF, DEFECTIVE AND	PREVENTION OF CRUELTY TO CHILDREN ;
EPILEPTIC CHILDREN ;	REFRACTORY CHILDREN ;
CARE AND PROTECTION OF CHILDREN	REMAND HOMES.
AND YOUNG PERSONS ;	

Introductory.—Parliament having imposed on local authorities by the Children and Young Persons Act, 1933 (*a*), considerable responsibilities in connection with the bringing of children and young persons before the juvenile court and with the provision of approved schools, and having provided that a local authority may be a "fit person" to whose care children and young persons may be committed, it is obvious that the local authorities are much concerned with the juvenile court, and that it is important that their officers, when dealing with children and young persons, should be acquainted with the powers and procedure of the juvenile court. By sect. 96 of the Act "local authority" is defined as being, as respects children, the local education authority for elementary education and, as respects other persons, the council of the county or county borough. Where a non-county borough council or a U.D.C. have relinquished all their powers and duties as an elementary education authority the county council are the local authority as respects children. The section, however, provides that the attainment of the age of fourteen years by a person who has previously been ordered to be sent to an approved school or to be committed to the care of a fit person is neither to terminate the powers or duties of the elementary education authority nor to confer any powers or duties on the county or county borough council. A county council may

(*a*) 26 Statutes 168 *et seq.* It has been thought unnecessary in this title to indicate the page on which a particular section appears.

arrange with local education authorities for elementary education for the performance within their areas of the functions of the county council under the Act. As to juvenile courts, see sects. 45 to 76 and the Second Schedule to the Act. The rules made under the Act are the Juvenile Courts (Constitution) Rules, 1933 and 1934 (*b*), and the Summary Jurisdiction (Children and Young Persons) Rules, 1933 (*c*). Any reference in this title to rules should be regarded as a reference to the first-named rules, in the absence of any other indication. [835]

A juvenile court is a court of summary jurisdiction and consists of magistrates sitting without a jury. Juvenile courts must be specially constituted, and, wherever sitting, are deemed to be petty sessional courts (sect. 45). They must consist of justices chosen from a panel of specially qualified justices formed in accordance with rules made by the Lord Chancellor, and no justice who is not a member of the panel may sit in a juvenile court (Sched. II., para. 1). By rule 3, where there is a stipendiary magistrate, he is *ex officio* a member of the panel.

A juvenile court must consist of not more than three justices from the panel; it must include one man, and so far as is practicable, one woman (rule 13). It must, of course, consist of at least two justices in order to be properly constituted as a petty sessional court; but a stipendiary magistrate, who may do alone any act required to be done by two justices, may sit alone if he is the one magistrate present and he thinks it inexpedient in the interests of justice to adjourn the proceedings (*ibid.*).

A juvenile court must sit either in a different building or room from that in which other courts are held or on different days (sect. 47 (2)). The Home Secretary has expressed the view that the provision of juvenile court accommodation away from the adult court is desirable, and has emphasised the fact that a juvenile court is not solely or primarily a criminal court; it is equally a civil court. [836]

Jurisdiction. *In Criminal Cases.*—A juvenile court has power to try summarily any criminal offence, committed by a child or young person, other than homicide (*d*). In the case of a child charged with an indictable offence other than homicide, the juvenile court must deal with him summarily unless it thinks it necessary in the interests of justice to commit him for trial jointly with an older person who is charged with him (*d*). In dealing with the case summarily, the court need not ask either the child or his parent whether he consents to this course (*d*). In the case of a young person, the juvenile court may try summarily any indictable offence, other than homicide, if it think fit and the young person consents to be so dealt with (*e*). The court is required to explain to the young person the difference between summary trial and trial by jury, to state the court and the place at which the trial on indictment would take place, and to tell the young person that before choosing he may consult his parent or guardian (S. J., C. & Y. P.) Rules, 1933, r. 8).

It is to be noted that a juvenile court may sit on any day for the purpose of hearing and determining indictable cases, even though it

(*b*) S.R. & O., 1933, No. 647/L 20 and S.R. & O., 1934, No. 273/L 3.

(*c*) S.R. & O., 1933, No. 819/L 23.

(*d*) Summary Jurisdiction Act, 1879, the new s. 10 substituted by Third Schedule to the Act of 1933.

(*e*) Summary Jurisdiction Act, 1879, s. 11, printed as amended at 11 Statutes 328.

be not a day publicly appointed for the hearing of indictable offences (sect. 48 (4)). Cases of homicide against children or young persons would be committed for trial in the ordinary way by the juvenile court acting as examining justices.

A child is a person under fourteen years of age, and a young person a person between fourteen and seventeen years of age (sect. 107). [837]

Care or Protection Cases.—Any child or young person who is in need of care or protection within the meaning of sect. 61 of the Act, may be brought before a juvenile court (f). As to the duties of local authorities in these cases, see *post*, pp. 426, 427. [838]

Refractory Children.—A child or young person who is alleged by his parent or guardian to be beyond his control may be brought before a juvenile court to be dealt with (sect. 64). The local authority may be directly interested in such cases, since an order that such a child or young person should be sent to an approved school cannot be made unless the local authority for the area in which he resides agree.

A poor law authority also have the right to bring before a juvenile court a child or young person, maintained in or boarded out from one of their schools or institutions, who is refractory, with a view to his being sent to an approved school (sect. 65). (See also titles APPROVED SCHOOLS and REFRACTORY CHILDREN.) [839]

Adoption Cases.—By the Adoption of Children Act, 1926 (g), an application to adopt an infant (*i.e.* a person under twenty-one years of age) may be made to the High Court, or a county court, or a court of summary jurisdiction. Where the application is made (as it is in the majority of cases) to a court of summary jurisdiction, it must be made to a juvenile court for the district in which either the applicant or the infant resides at the date of the application (h), and the application must be made, heard and determined *in camera* (i). The court appoints in every case a guardian *ad litem*, who may be a local authority (k). In fact, local authorities frequently undertake the duty. (See also title ADOPTION OF CHILDREN.) [840]

Assignment by Lord Chancellor of Cases to Juvenile Courts.—If the Lord Chancellor considers it desirable in the interests of children and young persons, he may assign to juvenile courts the hearing of applications for licences or orders relating to children and young persons, if such applications are cognisable either by justices, courts of summary jurisdiction, or petty sessional courts (sect. 46 (3)). In particular, for the purposes of the exercise of this power, complaints under sects. 44, 45 or 54 of the Education Act, 1921 (l), are to be deemed to be applications for orders relating to a child (*ibid.*). The sections cited relate to the making of school attendance orders, proceedings for disobedience of such orders, and the making of orders requiring defective or epileptic children to be sent to suitable classes or schools. (See also title BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN.) Up to the present time the Lord Chancellor has not exercised his power under the section, and

(f) See title CARE AND PROTECTION OF CHILDREN in Vol. II.

(g) 9 Statutes 827.

(h) Adoption of Children (Summary Jurisdiction) Rules, 1936, r. 2; S.R. & O., 1936, No. 19/2.1.

(i) *Ibid.*, r. 7.

(k) Adoption of Children Act, 1926, s. 8; 9 Statutes 830.

(l) 7 Statutes 154, 160.

the cases particularly referred to are still cognisable by the ordinary petty sessional courts and not by juvenile courts. [841]

Remission of Cases by other Courts.—Any court (*e.g.* a police court or a higher court) before which a child or young person is found guilty of any offence other than homicide, may, if it thinks fit, refrain from passing sentence or otherwise dealing with the case itself, and may remit the case to be dealt with by a juvenile court (sect. 56). The offender may be kept in custody or released on bail in the meantime (*ibid.*). The juvenile court, which is to be a court acting either for the same place as the remitting court, or for the place where the offender resides, may deal with him in any way in which it might have dealt with him if the juvenile court had tried him and found him guilty (*ibid.*). [842]

Disposal of Children and Young Persons before Appearance in Court.—When a child or young person is arrested, whether on a warrant or without warrant, and he cannot be taken forthwith before the court, the officer in charge of a police station, after inquiring into the case, may admit him to bail, and he is required so to release him unless the charge is one of homicide or other grave crime, or it is necessary to remove him, in his own interests, from association with a reputed criminal or prostitute, or the officer has reason to believe that release on bail would defeat the ends of justice (sect. 32 (1)). If he is not released on bail, he must not be detained, like an adult, in the police station, but must be detained in a remand home, unless the officer certifies that this is impracticable, or that he is so unruly that it would not be safe to send him to a remand home, or that it is inadvisable by reason of his state of health or his mental or bodily condition (sect. 32 (2)). The last condition no doubt covers cases of suspected venereal disease, suspected infections of certain other kinds, and suspected insanity.

When it is intended to bring a child or young person before a juvenile court as being in need of care or protection, or as being beyond control of his parent or guardian, or as a refractory poor-law case, or when after a supervision order has been made, it is considered necessary in his interests to bring him again before the court, the child or young person may be taken by a constable, or by any person authorised by a justice of the peace, to a place of safety, there to be detained till he can be brought before a juvenile court (sect. 67 (1)). A "place of safety" is defined in sect. 107 of the Act as "any remand home, workhouse or police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive a child or young person." [843]

Notice to Local Authority of Cases coming before the Court.—When a child or young person is charged with an offence and is to be brought before a court of summary jurisdiction (which may be a juvenile court) or examining justices, the police are required to notify forthwith the day and hour when the child or young person is to be brought up, together with the nature of the charge, to the local authority for the area in which the child or young person is resident, or, if the place of residence is not known, to the local authority for the area in which the offence is alleged to have been committed (sect. 35 (1)). Similarly, if a child or young person is to be brought before a juvenile court as in need of care or protection, the person who is bringing the child or

young person before the court must give notice to the local authority for the area in which the child or young person is resident, or if the place of residence is not known, to the local authority in whose area the circumstances justifying an application to the court are alleged to have arisen (*ibid.*). A similar notice is to be given to the probation officer for the probation area in which the court sits, but no notification need be given to the local authority when the child or young person is charged or brought before the court by a local or poor law authority (*ibid.*). As to who are the local authority, see *ante*, p. 423. The poor law authority by sect. 107 of the Act are defined as the council of a county or county borough and a joint committee of such councils established under sect. 8 of the Poor Law Act, 1930 (*m*). [844]

Inquiries by Local Authority.—Except in cases of a trivial nature, it is the duty of a local authority who receive a notice under sect. 35 (1) of the Act, or of a local authority or poor law authority bringing a child or young person before the court, whether as an offender or as in need of care or protection, to make inquiries and to render available to the court information about the home surroundings, school record, health and character of the child or young person; but if the justices or probation committee of a petty sessional division have arranged that investigations as to the home surroundings should be made by a probation officer, the local authority need not itself inquire into home surroundings (sect. 35 (2)). A local authority must also, in suitable cases, assist the court by giving information as to available approved schools (*ibid.*). [845]

Duty of Local Authority to take Proceedings.—Under the Act it becomes the duty of a local authority to bring before a juvenile court any child or young person in need of care or protection (as defined in sect. 61) who is found in or resides in their area, unless they are satisfied that such a proceeding would not be in his interests, or that proceedings are about to be taken by some other person (sect. 62 (2)). Further, when a court before which a person is convicted of certain offences in respect of a child or young person directs that the child or young person in question is to be brought before a juvenile court as being in need of care or protection, it is the duty of the local authority in whose area he was residing or was found, to bring him before the juvenile court (sect. 63).

As to the duty of the local authority to make inquiries in certain cases, see *supra*. [846]

Appearance of Local Authority.—Any member or officer of a local authority who is authorised by a resolution of the authority, either generally or in respect of a particular matter, may institute or defend proceedings before a court of summary jurisdiction and may appear on their behalf and conduct proceedings although he is not a solicitor (*n*). A juvenile court is a court of summary jurisdiction and therefore within this provision.

Under sect. 98 (1) of the Act, a local authority or a poor law authority may also institute proceedings for any offence under it or under Part I. of the Children Act, 1908. Part I. of the Act of 1908 is amended by the Children and Young Persons Act, 1932, and relates to infant life protection (*o*). (See title INFANT LIFE PROTECTION.) [847]

(*m*) 12 Statutes 909.

(*n*) L.G.A., 1933, s. 277; 26 Statutes 452.

(*o*) 9 Statutes 795; 25 Statutes 270, 271, 275.

Principles to be observed by Courts.—When a child or young person is before the court, either as an offender, or in need of care or protection, or otherwise, the court, in deciding how to deal with the case, is to have regard to his welfare; and in cases where it is necessary that he should be removed from undesirable surroundings or that proper provision should be made for his education and training, the court must take steps towards this end (sect. 44 (1)). [848]

The jurisdiction of the court has already been dealt with. As to its powers in dealing with children and young persons, the Act lays down certain restrictions and prescribes certain methods of treatment or disposal. No child under eight years of age can be charged with any criminal offence, and no child can be sent to prison in any circumstances (sects. 50, 52 (1)). A young person must not be committed to prison, either as a punishment, or in default of payment of a fine, damages or costs, or on remand, or on committal for trial, or while awaiting committal to an approved school, unless he is in the opinion of the court so unruly or so depraved that he cannot properly be sent to a remand home, and the court must give a certificate to this effect (sects. 33, 52 (3)). The certificate must be included in the order of committal (p). Where the court would be able to imprison an adult without the option of a fine, or could commit to prison in default of payment of a fine, damages or costs, a juvenile court may commit to the remand home for a period not in excess of the period of imprisonment that could be inflicted but for the restrictions of the Act, and not exceeding in any case one month (sect. 54). This is not to be done however, unless the court considers that none of the other methods by which the case could legally be dealt with is suitable, and consequently such committals are infrequent.

Where a court imposes a fine, damages or costs upon a child, the court must order that payment shall be made by the parent or guardian of the child, unless the court is satisfied that the parent or guardian cannot be found, or that he did not conduce, by neglect to exercise care, to the commission of the offence (sect. 55 (1)). The court may make a similar order in the case of an offence by a young person if it thinks fit (*ibid.*). In such cases the fine, damages or costs may be recovered from the parent or guardian as if he himself had been convicted, *i.e.* by distress and imprisonment (sect. 55 (4)), but subject now to the Money Payments (Justices' Procedure) Act, 1935. No such order is to be made on a parent or guardian without giving him an opportunity of being heard, unless, having been required to attend the court, he has failed to do so (sect. 55 (3)). In respect of a child or young person charged with an offence, the court may order his parent or guardian to give security for his good behaviour (sect. 55 (2)). A male child found guilty of an indictable offence may be ordered by a juvenile court to be given not more than six strokes with a birch rod (g). [849]

So far as probation cases are concerned, special provision is made by which a juvenile court is not deprived of its power to deal with its own probationers for a breach of recognisance merely because they have ceased to be children or young persons. Sect. 48 (2) of the Act specifically provides that the attainment by a probationer of the age of seventeen years shall not prevent the juvenile court from enforcing

(p) Summary Jurisdiction (Children and Young Persons) Rules, 1933, r. 31.

(g) Summary Jurisdiction Act, 1879, new s. 10 (2), substituted by Third Schedule to the Act of 1933.

his attendance before that court, or from dealing with him for a breach of recognisance, or from exercising the power to vary or discharge his recognisance.

Any child or young person found guilty of an offence punishable in the case of an adult with imprisonment may, under sect. 57, be sent to an approved school (see title APPROVED SCHOOLS), or committed to the care of a "fit person," whether a relative or not, who is willing to undertake the care of him; and in the latter case a probation order may also be made if the court think fit. A local authority may be a "fit person." (See title FIT PERSON, LOCAL AUTHORITY AS.)

Any juvenile offender may, of course, be put on probation under the Probation of Offenders Act, 1907 (*r*). There are restrictions upon the making of special conditions as to residence in an institution in the case of a child or young person (*s*).

So far as children and young persons in need of care or protection are concerned, the juvenile court can commit to an approved school, or to the care of a fit person (including a local authority), or can place the child or young person under the supervision of a probation officer or other person for a period not exceeding three years (which may be in addition to a "fit person" order or an order on the parent to enter into a recognisance), or may order the parent or guardian to enter into a recognisance to exercise proper care and guardianship (sect. 62 (1)).

A child or young person proved by his parent or guardian to be beyond control may be sent to an approved school, if the local authority consent, or may be placed under supervision for a period not exceeding three years (sect. 64). A refractory poor law child or young person may be sent to an approved school (sect. 65).

A child or young person who has been placed under supervision (which must be distinguished from probation of offenders) may at any time while the order remains in force and he is still under seventeen years of age, be brought before a juvenile court by the person exercising such supervision if it appears necessary in his own interests, and thereupon the court may, if it thinks desirable in his own interests, commit him to an approved school or to the care of a fit person (sect. 66 (1)).

A juvenile court has, by virtue of sect. 48 (3) of the Act special powers with regard to remands. If the court remands a child or young person for the purpose of inquiries about him, that court or any other juvenile court for the same petty sessional division or place may extend the period of the remand in his absence, provided that he appears before a court or a justice of the peace at least once every twenty-one days. Any such juvenile court may deal finally with the case when the required information has been obtained. If the original remanding juvenile court found him guilty of an offence and recorded their finding, any court subsequently dealing with the case may act upon that finding without hearing evidence as to the offence, except in so far as it may consider that such evidence will assist them in determining how to deal with the child or young person. [850]

Questions as to Age.—Age goes to the root of jurisdiction in many matters that come before a juvenile court. It is also highly material in certain cases as determining whether a particular offence has been committed or not; and this may be so, either with regard to the

(*r*) 11 Statutes 365

(*s*) Probation of Offenders Act, 1907, s. 2 (2) as amended by Third Schedule to the Act of 1933.

person accused of an offence, or with regard to the victim of the offence.

If the person be brought before the court as a child or young person, the court is to make due inquiry and to hear such evidence as is forthcoming regarding the question of age (sect. 99 (1)). But no order or judgment can be subsequently invalidated because it appears that the age has not been correctly stated, and for all the purposes of the Act (*e.g.* approved school or "fit person" orders) the age presumed or declared by the court is to be deemed the true age (*ibid.*). If it appears to the juvenile court that a person is of the age of seventeen or more, then for the purposes of the Act he is deemed not to be a child or young person (*ibid.*).

In case of any charge for an offence against the Act, or for any of the offences mentioned in its First Schedule (*t*) (except an offence under the Criminal Law Amendment Act, 1885 (*u*), where special considerations arise and age will have to be strictly proved), if it is alleged that either the person charged, or the person in respect of whom the offence was committed, was a child, or was a young person, or had attained a specified age (*e.g.* sixteen years in the case of an offender against sect. 1 of the Act of 1933) and this appears to the court to have been so at the date of the alleged offence, then for the purposes of that Act such age is to be presumed to be correct unless the contrary is proved (sect. 99 (2)). If, however, a person who is charged with an offence against a person apparently under a specified material age proves that the person was actually of or over that age, it is, of course, a defence to the charge (sect. 99 (4)). But it is no defence simply to prove that an alleged child was a young person, or *vice versa*, if the offence could equally be committed in respect of either (sect. 99 (3)).

As to what may be sufficient proof of age, the cases of *R. v. Cox* (*a*), *R. v. Turner* (*b*), and *R. v. Viasani* (*c*) may be consulted. [551]

Rules as to Procedure.—The Lord Chancellor has, under sect. 47 of the Act, made the Summary Jurisdiction (Children and Young Persons) Rules, 1933 (*d*), regulating the procedure in juvenile courts. These prescribe in some detail the procedure to be followed in a juvenile court in hearing cases against juvenile offenders, and cases where children or young persons are brought before the court as in need of care or protection, or as refractory. Naturally, so far as offenders are concerned, ordinary criminal procedure as in a court of summary jurisdiction is followed, with certain modifications designed to make the proceedings less formal and more intelligible to a child.

Parents and guardians are given special rights as to taking part in the proceedings, whether their children are brought up as offenders or otherwise. Thus by rule 5 they may assist the child or young person in conducting his defence, including the cross-examination of witnesses, unless, of course, he is legally represented; and where a child or young person is alleged to be in need of care or protection the parent or guardian may conduct the case in opposition to the application (rule 18 (1)). In the case of an offence, where the child or young person is

(*t*) For a list of these offences see note (*d*) on p. 413 of Vol. II.

(*u*) 4 Statutes 706.

(*a*) [1898] 1 Q. B. 179; 15 Digest 857, 9408.

(*b*) [1910] 1 K. B. 346; 22 Digest 185, 1570.

(*c*) (1866), 31 J. P. 260; 22 Digest 185, 1569.

(*d*) S.R. & O., 1933, No. 810/L 23.

found guilty, the parent or guardian, as well as the offender, is to be given an opportunity of making a statement (rule 11); and in care or protection cases a similar opportunity is to be given if the court is satisfied that a *prima facie* case is made out (rule 20). And again, before actually proceeding to a final decision, the court, unless for any reason it thinks it undesirable to do so in a particular case, is required to inform the parent or guardian of the way in which it proposes to deal with the child or young person and to allow the parent or guardian to make representations (rules 12, 22).

If the court considers, in a care or protection case, that, by reason of the nature of the case or of the evidence to be given, it is in the interests of the child or young person that the evidence should not be given in his presence, the court may hear such evidence in his absence, allowing his parent or guardian to be present (rule 19 (2)). This provision does not apply to evidence relating to the character or conduct of the child or young person himself (*ibid.*). The court may exclude the parent or guardian while the child or young person gives evidence or makes a statement, if the court thinks it proper in the special circumstances of the case; but in that event the parent or guardian is to be informed subsequently of the substance of any allegation made by the child or young person, and is to be given an opportunity of meeting it (rule 19 (3)). [852]

When an offence has been proved against a child or young person, or when the court is satisfied by the evidence that he is in need of care or protection, or where it is proved that he is beyond control of the parent or guardian, the court, in making its investigations into the general conduct of the child or young person, his home surroundings, school record and medical history, may receive written reports from a probation officer, local authority or registered medical practitioner (rules 11, 21). These may be considered without being read aloud; but the rules provide that where such written reports are so received and considered, the child or young person is to be told the substance of any part of the report bearing on his character or conduct which may affect the court in dealing with him, and that, similarly, the parent or guardian, if present, is to be told the substance of any part of the report bearing on the character or conduct of the parent or guardian, or the character, conduct, home surroundings or health of the child or young person, which may affect the court in dealing with the case (rules 11, 21). If necessary, the person who made the report may be required to attend, or further evidence may be produced, so that either the child or young person or his parent or guardian may contest what is in the report or may give further evidence on the matter (*ibid.*).

In care or protection cases, where a child or young person is to be brought before the juvenile court otherwise than on a summons or by warrant, it is the duty of the person or the authority responsible for the proceedings to serve a notice on the parent or guardian of the child or young person, if he can be found, stating the time and place at which the child or young person is to be brought before the court, and the grounds upon which he is being brought (*e.g.* that the child, having a parent not exercising proper guardianship, is exposed to moral danger); and a notice to the same effect is to be sent to the clerk of the court so that he may enter particulars of the case in the juvenile court register (rule 15). Sect. 34 (2) of the Act imposes an obligation on a constable arresting a child or young person or taking

him to a place of safety, or on any other person taking him to a place of safety, or an officer in charge of a police station to which he is brought, to cause the parent or guardian to be warned to attend the court before which the child or young person will appear. The parent or guardian may be required to attend during all the stages of the proceedings unless the court is satisfied that it would be unreasonable (sect. 34 (1)). A summons issued against a child or young person may include a summons to his parent or guardian to attend the court (rule 80).

The parent or guardian who may be so required to attend is the person having actual possession and control of the child or young person; but if he is not the father the father may be also required to attend (sect. 34 (4)). If the child or young person has already been removed by order of a court from the custody of the parent, then the parent's attendance cannot be required (sect. 34 (5)). [853]

Exclusion of Public.—In addition to the powers possessed by all courts with reference to the exclusion of the public in certain circumstances, there are special enactments with regard to juvenile courts. Under sect. 47 (2) of the Act, no person, unless specially authorised by the court, may be present at any sitting of a juvenile court except (i.) members and officers of the court; (ii.) parties to the case before the court, their solicitors and counsel, and witnesses and other persons directly concerned in that case; or (iii.) *bona fide* representatives of newspapers or news agencies.

It will be noticed that the court has power to give special permission to a person to attend a juvenile court. In the Report of the Young Offenders Committee (1927) reference is made to the practice of allowing students taking a course of social service to be present, and the view was expressed that "the practice is prejudicial to the interests of the young people concerned." Permission is, of course, frequently given to visitors from abroad who wish to see English juvenile courts in operation, and to magistrates from one district to be present at the sittings of juvenile courts in another district. [854]

Newspaper Reports.—By sect. 49 of the Act restrictions are placed upon the matters that may be published in newspapers in reporting juvenile court proceedings. To reveal in a newspaper report the name, address or school of a child or young person concerned in any juvenile court proceedings, whether he was the person against or in respect of whom the proceedings were taken, or was a witness, is an offence. Equally it is an offence to include in a newspaper report any particulars calculated to lead to the identification of such a child or young person, or to publish in a newspaper any picture of such a child or young person. The restrictions apply to criminal cases, care or protection cases, "beyond control" cases, and indeed all kinds of proceedings in a juvenile court. The penalty for publishing matter in contravention of these restrictions is a fine on summary conviction, of not more than £50 (sect. 49 (2)). The court, or the Secretary of State, may in any case by order dispense with these requirements to such extent as may be specified in the order, if satisfied that it is in the interests of justice to do so (sect. 49 (1), proviso). [855]

JUVENILE UNEMPLOYMENT BENEFIT

See UNEMPLOYMENT INSURANCE.

KEEPING OF ANIMALS

See ANIMALS, KEEPING OF.

KNACKERS' YARDS

See SLAUGHTERHOUSES AND KNACKERS' YARDS.

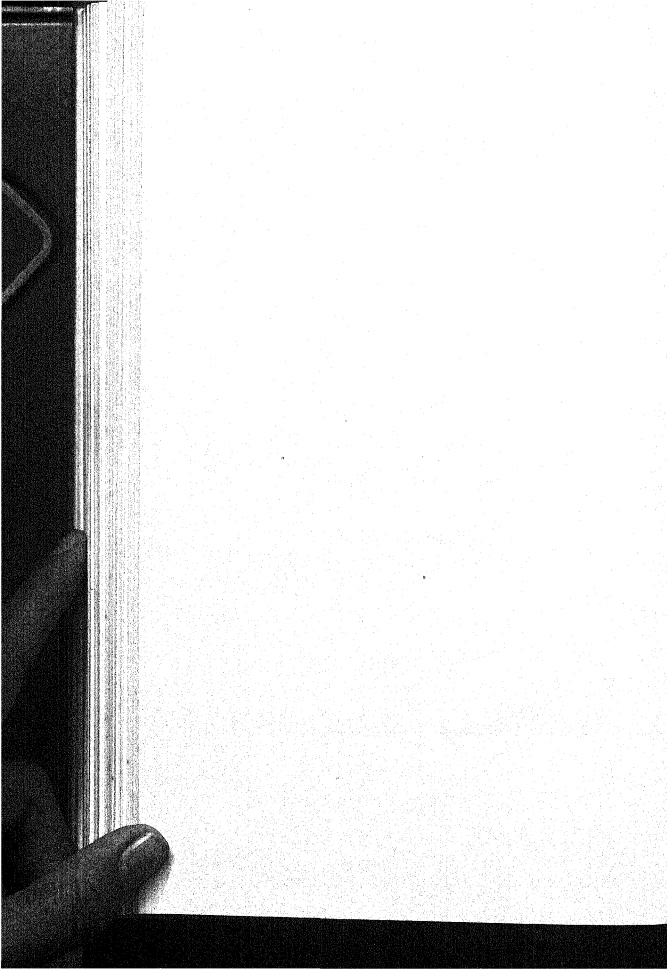
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